

No. 15084

United States
Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

E. F. SHUCK CONSTRUCTION CO., INC.,
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, SEATTLE CHAPTER, INC., THE SEATTLE CONSTRUCTION COUNCIL and HOD CARRIERS' BUILDING AND COMMON LABORERS' UNION, LOCAL No. 242, AFL,
Respondents.

and

ASSOCIATED GENERAL CONTRACTORS OF AMERICA, SEATTLE CHAPTER, INC., and its affiliate SEATTLE CONSTRUCTION COUNCIL,
Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

Transcript of Record

Petition for Enforcement and Petition for Review of Order
of the National Labor Relations Board

FILE

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TORS OF AMERICA, SEATTLE CHAP-
TER, INC., THE SEATTLE CONSTRUC-
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BUILDING AND COMMON LABORERS'
UNION, LOCAL No. 242, AFL,
Respondents.

and

ASSOCIATED GENERAL CONTRACTORS OF
AMERICA, SEATTLE CHAPTER, INC.,
and its affiliate SEATTLE CONSTRUCTION
COUNCIL, Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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GENERAL COUNSEL'S EXHIBIT No. 1-H

United States of America

Before the National Labor Relations Board
Nineteenth Region

Case No. 19-CA-851

In the Matter of E. F. SHUCK CONSTRUCTION CO., INC., and THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, SEATTLE CHAPTER, INC., and THE SEATTLE CONSTRUCTION COUNCIL, and RICHARD B. KIEBURTZ, an Individual.

Case No. 19-CB-261

In the Matter of HOD CARRIERS', BUILDING AND COMMON LABORERS' UNION LOCAL No. 242, AFL, and RICHARD B. KIEBURTZ, an Individual.

CONSOLIDATED COMPLAINT

It having been charged by Richard B. Kieburtz, an individual, that the Respondents, E. F. Shuck Construction Company, Inc., The Associated General Contractors of America, Seattle Chapter, Inc., The Seattle Construction Council, and Hod Carriers', Building and Common Laborers' Local No. 242, AFL, have engaged in and are now engaging in certain unfair labor practices affecting commerce as set forth in the Labor-Management Relations Act of 1947, 61 Stat. 136, herein called the Act, the General Counsel of the National Labor Relations Board, on

behalf of the Board, by the Regional Director for the Nineteenth Region, designated by the Board's Rules and Regulations, Series 6, as amended, Section 102.15, hereby issues this Consolidated Complaint and alleges as follows:

I.

E. F. Shuck Construction Company, Inc., herein called the Company, is a Washington corporation engaged in general construction work, with its principal offices in Seattle, Washington.

II.

The Company is a member of The Associated General Contractors of America, Seattle Chapter, Inc., herein called AGC Seattle Chapter, whose other members are engaged in building, heavy, and highway construction work.

III.

The AGC Seattle Chapter has other affiliate members engaged in specialty construction work, who are associated under the name of "Seattle Construction Council, Affiliate Members of The Associated General Contractors of America, Seattle Chapter, Inc.," hereafter called the Construction Council.

IV.

The Company annually engages in construction work valued in excess of \$50,000 for employers who operate facilities of interstate and international commerce, and for other employers whose opera-

tions produce goods and services for out-of-state deliveries valued in excess of \$25,000 annually.

V.

In addition to the Company, the enterprises that are members and affiliate members of AGC Seattle Chapter and of the Construction Council, who are associated for purposes, *inter alia*, of negotiating collective bargaining agreements with trade unions, governing the labor-management relations of all members, conduct construction work which, to an extent exceeding \$50,000 annually, is performed for employers who operate facilities of interstate and international commerce, and for other employers who produce goods and services for out-of-state deliveries valued in excess of \$25,000 annually.

VI.

The operations of the Company affect commerce within the meaning of Section 2 (6) and (7) of the Act.

VII.

The labor-management relations practices of AGC Seattle Chapter and of the Construction Council, both acting as agents of the Company, affect commerce within the meaning of Section 2 (6) and (7) of the Act.

VIII.

Hod Carriers', Building and Common Laborers' Union Local No. 242, AFL, hereafter called Local 242, at all times hereafter mentioned has been and is a labor organization within the meaning of Section 2 (5) of the Act.

IX.

The AGC Seattle Chapter and the Construction Council, acting in behalf of the members of each organization, including the Company, on November 3, 1950, entered into a collective bargaining agreement with Local 242, which agreement is presently being given effect by the parties to it and, inter alia, provides

(a) Members of the said employer organizations shall "employ none other than members" of Local 242 in the type of work its members are employed in, and

(b) Local 242 undertakes to "require all employers, whether members * * * or not" of the said employer organizations, within the territorial limits of the jurisdiction of Local 242, to impose the condition of employment required under (a) above.

X.

The Company gave effect to the agreement described in paragraph IX, and on July 31, 1953, it discharged Richard B. Kiebertz, a common laborer employed by the Company, because of his nonmembership in Local 242, since which date it has refused to reinstate him.

XI.

Local 242, on or about July 31, 1953, requested the Company to take the action described in paragraph X.

XII.

By the action and conduct described in paragraphs IX and X, acting on the request described in

paragraph XI, the Company, the AGC Seattle Chapter, and the Construction Council has discriminated against employees, and particularly against employee Kiebertz, to encourage membership in Local 242, in violation of Section 8 (a) (3) of the Act, and Local 242 did attempt to cause and did cause such discrimination in violation of Section 8 (b) (2) of the Act.

XIII.

The action of the Company, the AGC Seattle Chapter, and the Construction Council described in paragraphs IX and X, interfered with, restrained and coerced employees in the exercise of their rights under Section 7 of the Act thereby violating Section 8 (a) (1) of the Act; and the action of Local 242 described in paragraphs IX and XI coerced and restrained employees in the exercise of their rights under Section 7 of the Act thereby violating Section 8 (b) (1) (A) of the Act.

XIV.

The action and conduct of all Respondents, as set forth in paragraphs IX through XI, inclusive, occurring in connection with the operations of the Employers described in paragraphs I through VII, inclusive, have a close, intimate and substantial relation to trade, traffic and commerce among the several states of the United States and with foreign countries, and have led to and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce within the meaning of Sections 8 (a) (1) and (3) and Sections 8 (b) (1) (A) and (2) and of Section 2 (6) and (7) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board issues this Consolidated Complaint against the Respondents, E. F. Shuck Construction Company, Inc., The Associated General Contractors of America, Seattle Chapter, Inc., and The Seattle Construction Council, Affiliate Members of The Associated General Contractors of America, Seattle Chapter, Inc., and Hod Carriers', Building and Common Laborers' Union Local No. 242, AFL.

Dated at Seattle, Washington, this 16th day of October, 1953.

[Seal] /s/ THOMAS P. GRAHAM, JR.,
Regional Director, National Labor Relations Board,
Region 19, 407 U. S. Court House, Seattle 4,
Washington.

Affidavit of Service and Postal Return Receipts
Attached.

GENERAL COUNSEL'S EXHIBIT No. 1-J

[Title of Board and Cause.]

ANSWER OF ASSOCIATED GENERAL CON-
TRACTORS OF AMERICA, SEATTLE
CHAPTER, INC., and SEATTLE CON-
STRUCTION COUNCIL

Associated General Contractors of America, Seat-
tle Chapter, Inc., and its affiliate, Seattle Construc-

tion Council, answer the Complaint herein as follows:

I.

The allegations of paragraphs II, III, V, VIII and IX of the Complaint are admitted.

II.

The allegations of paragraphs VII, XII, XIII and XIV of the Complaint are denied.

III.

These answering defendants do not have sufficient knowledge or information upon which to base a belief as to the truth or falsity of the allegations of the remaining paragraphs of the Complaint, and, therefore, deny the same.

Wherefore, these defendants pray that the Complaint be dismissed as to them.

/s/ LYCETTE, DIAMOND &
SYLVESTER,

Attorneys for Associated General Contractors of
America, Seattle Chapter, Inc., and Seattle
Construction Council.

Duly Verified.

GENERAL COUNSEL'S EXHIBIT No. 1-K

[Title of Board and Cause.]

ANSWER OF E. F. SHUCK CONSTRUCTION
CO., INC.

E. F. Shuck Construction Co., Inc., answers the Complaint of the National Labor Relations Board as follows:

I.

Paragraphs I and II are admitted.

II.

Paragraph III is denied for want of knowledge.

III.

Paragraph IV is denied except that this answering defendant admits "The Company annually engages in construction work valued in excess of \$50,000".

IV.

Paragraphs V, VI, and VII are denied for want of knowledge.

V.

Paragraph VIII is admitted.

VI.

Paragraph IX is denied for want of knowledge.

VII.

Paragraph X is denied.

VIII.

Paragraphs XI, XII, XIII and XIV are denied.

This answering party, responding further and by way of affirmative defense, alleges:

That prior to July 29, 1953, one Richard B. Kieburtz, representing himself to be a student and seeking work, made application to this answering defendant for employment. That his name and telephone number were kept at the office of this answering defendant, and on or about July 28, 1953, this answering defendant was in need of additional help by reason of the fact that it was about to pour a batch of cement, and so notified the office that additional help would be needed for a few days to pour this cement. That the said Richard B. Kieburtz was called and reported to this answering defendant's Mercer Island School District job on Mercer Island, and was put to work on July 29, 1953, as a common laborer by the Superintendent of this answering defendant. He was employed as a common laborer for work on the said job site on a day to day basis, and worked July 29, July 30, and July 31, 1953, being Wednesday, Thursday and Friday. By that time the temporary necessity for additional common labor had ended, as the batch of cement had been poured. By reason of the fact that the young man either was unwilling to perform the work or was not adapted to the work, he was not considered to be a desirable employee, and his services have not been sought since July 31, 1953. That he remained with this answering defendant until

the temporary need was ended, and that neither his employment nor the fact that his services have not been sought since July 31, 1953, have any bearing whatsoever on whether he did or did not have a membership in any Union or Labor organization.

Wherefore, this answering defendant prays that the Complaint be dismissed as to this answering defendant.

[Seal] E. F. SHUCK CONSTRUCTION
CO., INC.

/s/ By E. F. SHUCK JR.,
Vice President.

Duly Verified.

GENERAL COUNSEL'S EXHIBIT No. 1-L

[Title of Board and Cause.]

ANSWER OF HOD CARRIERS' BUILDING
AND COMMON LABORERS' UNION LO-
CAL No. 242, AFL

Hod Carriers' Building and Common Laborers' Union Local No. 242, AFL answers the Complaint herein as follows:

I.

The allegations of paragraphs II, III, V, VIII and IX of the Complaint are admitted.

II.

The allegations of paragraphs VII, X, XII, XIII and XIV of the Complaint are denied.

III.

This answering defendant does not have sufficient knowledge or information upon which to base a belief as to the truth or falsity of the allegations of the remaining paragraphs of the Complaint, and therefore denies the same.

Wherefore, this defendant prays that the Complaint be dismissed as to it.

/s/ ROY E. JACKSON,
Attorney for Hod Carriers' Building and Common
Laborers' Union Local No. 242, AFL.

Duly Verified.

[Title of Board and Cause.]

INTERMEDIATE REPORT AND
RECOMMENDED ORDER

Melton R. Boyd, Esq., for the General Counsel.
Carl E. Croson, Esq., and Arthur G. Quigley, Esq.,
of Seattle, Wash., for Shuck. Lyle L. Iversen, Esq.,
for the General Contractors and the Construction
Council. Roy E. Jackson, Esq., for the Union.

Before: Wallace E. Royster, Trial Examiner.

Statement of the Case

Upon charges filed by Richard B. Kieburtz, an individual, against E. F. Shuck Construction Co., Inc., herein called Shuck; The Associated General Con-

tractors of America, Seattle Chapter, Inc., herein called the General Contractors; The Seattle Construction Council, herein called the Construction Council; and Hod Carriers', Building and Common Laborers' Union, Local No. 242, AFL, herein called the Union, the General Counsel for the National Labor Relations Board issued his complaint against each of the above-named Respondents alleging certain violations of the National Labor Relations Act, as amended, 61 Stat. 136.

The core of the complaint is that the Construction Council, a division of the General Contractors, in behalf of Shuck and other employers, entered into and gave effect to a collective bargaining agreement with the Union, contemplating that only members of the Union would be hired for employment in any work performed by members of the General Contractors and the Construction Council. It is alleged that Kieburtz, after obtaining employment with Shuck, was discharged because he was not a member of the Union.

Pursuant to notice a hearing was held before the undersigned Trial Examiner in Seattle, Washington, on October 29 and 30, 1953. All parties were represented, were permitted to examine and cross-examine witnesses and to participate fully in the hearing. Briefs have been received from the General Counsel, the Union, the General Contractors, and Shuck.

Upon consideration of the record and the briefs, and from my observation of the witnesses, I make the following:

Findings of Fact

I. The business of the Respondents

Shuck, a Washington corporation engaged in general construction work with its principal offices in Seattle, annually engages in construction work valued in excess of \$50,000 for employers who operate facilities of interstate and national commerce and for other employers whose operations produce goods and services for out-of-State delivery valued in excess of \$25,000 annually.

The General Contractors and the Construction Council have as members employers engaged in the Seattle area in the construction of buildings and highways. The General Contractors and the Construction Council negotiate collective bargaining agreements with trade unions for their members, some of whom engage in construction work to an extent exceeding \$50,000 annually for employers who operate facilities of interstate and national commerce and for other employers who produce goods and services for out-of-State delivery valued in excess of \$25,000 annually.

The Union is a labor organization admitting to membership employees of Shuck and of other members of the General Contractors and the Construction Council.

II. The unfair labor practices

On November 3, 1950, the General Contractors and the Construction Council in behalf of their members, including Shuck, entered into a collective bargaining agreement with the Union which was

still in effect at the time of the hearing and which provided that none of the employer members would employ other than members of the Union. The practice under this contract in respect to Shuck and the Union was for the former to advise the Union of any need for laborers or hod carriers, who then would be dispatched from the Union hall to the construction site. In June 1953 Shuck began work looking toward the construction of several school buildings in or near Seattle.

Richard Kieburtz, age 19, a student at the University of Washington, in July 1953 was seeking temporary employment. Learning that his opportunity to find work would be greater if he was a member of the Union, Kieburtz went to the Union's office where he spoke to Robert Buchanan, a business agent. Buchanan told him, Kieburtz testified credibly, that if he found a job to have the employer call the Union in connection with getting a permit for Kieburtz to work on a temporary basis. On the same day Kieburtz applied to Everett Sayler, Shuck's job superintendent on the school construction, for work. Sayler suggested that Kieburtz leave his name in Shuck's office and Kieburtz did so. On July 28 Kieburtz was informed by telephone that Shuck had a job for him to begin the next morning. On July 29, a Wednesday, Kieburtz reported to work on the school construction job. Sayler that morning, according to Kieburtz, said, "We'll have to see how this union business works out later." Kieburtz was put to work with another laborer, Sam Swatack, under the supervision of Foreman Chester Tucker.

About 10:30 in the morning of Friday, July 31, Kieburtz, he testified, saw Elmer Wood, another of the Union's business agents, in conversation with Superintendent Sayler, and noticed one of them pointing in his direction. Wood then spoke to Foreman Tucker and coming to Kieburtz asked if Kieburtz had a "card or anything." Kieburtz answered that he would like to join the Union but had no card. Wood answered that Kieburtz could not become a Union member. Tucker came over at this point, according to Kieburtz, and said that Kieburtz would be permitted to work out the day. Kieburtz remarked to Wood that he thought he was entitled to join the Union as long as he had a job within its jurisdiction. Wood answered that there were too many members unemployed and that new ones would not be taken in. At the close of the work day Foreman Tucker gave Kieburtz two checks, one for the work on Wednesday, the end of a payroll period, and the other for Thursday and Friday. Tucker remarked, "Sorry, but that is the way it is." Kieburtz went to Superintendent Sayler who said, in the words of Kieburtz, "I don't know just what to tell you, kid. We have to go along with the Union on this or they can make trouble for us." Sayler said that Shuck had an agreement with the Union to hire through the Union's hall. Kieburtz protested that he thought the Taft-Hartley Act made such an arrangement unlawful. Sayler answered that the contract with the Union must be honored. Kieburtz on the following Monday filed the charges giving rise to this proceeding.

Robert Buchanan testified that laborers were dispatched from the Union's hall to Shuck and other employers upon request and that members of the Union were invariably dispatched before anyone without that qualification. In respect to students, Buchanan testified it was the Union's practice to give permits upon the application of an employer enabling a student to work throughout the vacation period and if such an employee was retained for more than 10 days, to require him to pay a \$5 permit fee. Such permits were never given directly to the student on his application. Buchanan denied that he or the Union was in any respect concerned in Kieburtz' discharge.

Superintendent Sayler testified that Kieburtz applied to him for work, that Sayler instructed him to leave his name at the office, and that about a week or so later Kieburtz appeared on the job. According to Sayler he had need on July 29 for some additional laborer help because concrete footings were about to be poured on some of the school buildings. Sayler testified that Kieburtz was called to work through error, that he had in mind another applicant. Upon Kieburtz' first application, according to Sayler, the latter asked him if he was a member of the Union. Kieburtz answered that he was not but that he would handle that matter himself. On the morning of July 29, according to Sayler, there was no mention of Union membership between him and Kieburtz. During the next 3 days Sayler observed, he testified, that Kieburtz was not cleaning out the bottom of the footing forms properly and that he was a

slow worker. Still according to Sayler, Foreman Tucker complained that Kieburtz did not follow instruction. Sayler observed, he testified, that Kieburtz was not keeping pace with the other laborers on the job. Before noon on Thursday, July 30, Sayler concluded that Kieburtz would not do and determined to discharge him. Sayler denied that Business Agent Woods spoke to him concerning Kieburtz. Foreman Tucker testified that Kieburtz was "satisfactory," but would do things in his own way rather than follow literal instruction. Tucker testified that he told Superintendent Sayler he did not think Kieburtz would be a satisfactory employee. Tucker testified that Business Agent Woods, as far as his knowledge extended, had nothing to do with Kieburtz' discharge, but did recall that he heard Woods tell Kieburtz to get himself straightened out with the Union.

Sam Swatack, a member of the Union who worked closely with Kieburtz, testified that Kieburtz appeared to be inexperienced and for that reason, Swatack did not like to work with him.

E. F. Shuck, Sr., testified that he observed Kieburtz at work on July 29 and indicated to Superintendent Sayler that Kieburtz was not satisfactory. The next day, according to Shuck, he told Sayler to get rid of Kieburtz as soon as it was convenient. About 8:30 on the morning of July 31, according to Shuck, he signed the final check for Kieburtz and later that morning delivered it to the job.

Eugene Shuck, Jr., testified that his company had employed students during the summer months on other occasions and sought permits from the Union

for those who proved their competency as workers. No such permit was requested for Kieburtz by his employer. The job of laborer in construction work appears to be one requiring no particular training although, as in almost any field, I assume that experience is of some value. Kieburtz in previous summers had worked in such employment and was not entirely unfamiliar with construction work from the standpoint of a laborer. His appearance is that of a young man of good physique and intelligence. Superintendent Sayler must have concluded at the time of his first interview with Kieburtz that the latter probably would make an acceptable worker for it seems unlikely that otherwise, he would have suggested that Kieburtz leave his name and telephone number at the employment office. But within a day and a half after Kieburtz reported for work Sayler became convinced, he testified, that Kieburtz was not earning his way. There is nothing inherently improbable about such a development. But what puzzles is the retention of Kieburtz on the job for more than a day after Sayler had reached that conclusion. E. F. Shuck, Sr., testified that he had instructed Sayler to release Kieburtz as soon as convenient. Although Sayler did not testify that Shuck had so instructed him, no reason is suggested for retaining Kieburtz after the finish of work on July 30. Kieburtz' immediate foreman, Tucker, characterized Kieburtz' work as satisfactory, with the qualification that he did not follow instruction. Kieburtz testified that at no time during the 3 days that he worked was his work in any respect criticized or was

he at any time told that he had failed in any fashion to follow an instruction.

The contract running between the General Contractors and the Union covering the operations of Shuck contains a patently unlawful provision in respect to union security. An employer in an operation in commerce or affecting commerce may not lawfully agree to prefer union members for hire, and a union may not lawfully contract with such an employer to that effect. It is argued that Section 11 of that contract, reading

If any section, subsection, clause, sentence or phrase of this agreement is, for any reason, held to be repugnant to or in conflict with or in violation of the Labor-Management Relations Act of 1947, otherwise known as the Taft-Hartley Labor Act, being 29 U.S.C., et seq., such repugnancy, conflict or violation shall not affect the validity of the remaining portions of this agreement, and all portions thereof not repugnant to or in conflict with or in violation of said Labor-Management Relations Act of 1947 shall be enforced and abided by as herein written.

has the effect of removing the offending section and permitting the contract otherwise to stand. I do not so interpret it. The section concerning employment imposes unlawful conditions and Section 11 does no more than provide that if such illegality is adjudicated the remaining portions of the agreement will continue in effect. By giving effect to a contract preferring members of the Union for hiring and reten-

tion of employment, the General Contractors, the Construction Council, and Shuck accomplish such an interference, restraint, and coercion of employees in respect to rights guaranteed in Section 7 of the Act as amounts to a violation of Section 8 (a) (1) of the Act.

By such conditioning of employment and retention of employment upon membership in or approval by the Union, those three Respondents encouraged membership in the Union and thereby violated Section 8 (a) (3) of the Act.

By giving effect to this offending paragraph in the contract the Union restrained and coerced employees in respect to rights guaranteed in Section 7 of the Act, in violation of Section 8 (b) (1) (A) of the Act.

The contract and the hiring and referral practices under it, constitute a successful attempt by the Union to cause the employer signatories to discriminate against employees, in violation of Section 8 (a) (3) of the Act, and the Union thereby has violated and is violating Section 8 (b) (2) of the Act.

Against the setting of the contract provisions and the hiring practices, the discharge of Kieburtz must be viewed. Kieburtz was in my opinion an honest and truthful witness in respect to the developments concerning his employment. I recognize of course that his appraisal of his work performance may be more favorable to him than a disinterested observer would make. But the complaints voiced by Sayler, Tucker, and E. F. Shuck, Sr., are trivial. I do not

credit the testimony that Kieburtz was an unwilling worker. The criticisms contained in the testimony, if they have validity at all, appear to relate to conduct which quickly could have been corrected by a word from any of those in a supervisory capacity. Kieburtz' testimony already related concerning his conversation with Sayler after the receipt of his final check on the evening of July 31, stands uncontradicted. Sayler testified that he recalled no conversation with Kieburtz at the time. I credit Kieburtz' relation of what occurred then.

On the basis of all the evidence, upon a conviction derived from the testimony that Kieburtz was a reasonably competent worker and that Shuck had no serious ground for complaint in respect to his work performance, I am convinced that his discharge on July 31 was motivated by the conviction of Respondent Shuck that his continued employment might lead to some difficulty with the Union. Sayler, as quoted by Kieburtz, put it succinctly and truthfully when he said that the contract with the Union must be honored. The reason for the discharge was thus admitted.

It will be recalled that Foreman Tucker testified to a conversation between Kieburtz and Business Agent Woods on the morning of July 31 to the effect that Kieburtz himself make some arrangement with the Union. It is urged by the General Counsel that the evidence is sufficient to establish that a demand was made by the Union upon Shuck that Kieburtz be discharged. The circumstances of the visit of the

Union agent to the job, his conversations with Saylor, Tucker, and Kieburtz, and the discharge of Kieburtz at the close of that day are suggestive of such a happening. But I do not find that any such demand was made. I am convinced, as I have found, that the discharge of Kieburtz occurred because he was not a member of the Union and because he did not have the permission of the Union to remain in his employment. As the Union was a party to an agreement with Shuck and other employers requiring Union membership or approval for hire and retention of employment, it is of no concern here whether in fact any demand was made specifically requiring the discharge of Kieburtz. The fact is that by contract the Union and Shuck and other employers had agreed that men without Union membership or approval would not be hired or retained in employment. Kieburtz was one such and his discharge followed. I find that by the discharge of Kieburtz the Respondent Shuck discriminated in regard to his hire and tenure of employment, thus encouraging membership in the Union and thus violating Section 8 (a) (3) of the Act. Because this discrimination stemmed from a contractual relationship between Shuck and the Union and because the contract was the product of negotiation between the General Contractors and the Construction Council on the one hand and the Union on the other, I find that the General Contractors and the Construction Council to the same extent as Shuck discriminated in regard to the hire and tenure of employment of Kieburtz — thus encouraging membership in the

Union and thereby violating Section 8 (a) (3) of the Act.¹

By giving effect to the offending clause in the contract the Union caused Shuck to discriminate in regard to the hire and tenure of employment, in violation of Section 8 (a) (3) of the Act, and thereby violated Section 8 (b) (2) of the Act.

By the discharge of Kieburtz the Respondent Shuck, the General Contractors, and the Construction Council interfered with, restrained, and coerced an employee in the exercise of rights guaranteed in Section 7 of the Act and thereby violated Section 8 (a) (1) of the Act.

By contracting so as to make objectionable under the contract the continued employment of Kieburtz, the Union restrained and coerced an employee in the exercise of rights guaranteed in Section 7 of the Act and thereby violated Section 8 (b) (1) (A) of the Act.

The argument that the union security clause of the contract finds protection in Section 102 of the Act is untenable. The contract under which the discharge was made was executed in November 1950. It may be true, as asserted, that the union security provision in that contract was no more than a reiteration of the same clause in contracts which had been effective between the parties for years before the passage of the Labor Management Relations Act, 1947, but the fact is that any such agreement was renewed or extended in November 1950 and what-

¹ George D. Auchter Company, 102 NLRB 881.

ever protection Section 102 may have afforded the parties prior to that date was then and thereby lost.

III. The effect of the unfair labor practices upon commerce

The activities of the Respondent set forth in Section II above, occurring in connection with the operations of Respondent Shuck described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

IV. The remedy

Because it has been found that Respondent Shuck, Respondent General Contractors, Respondent Construction Council, and the Respondent Union have engaged in certain unfair labor practices, it will be recommended that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. As the contract between the General Contractors and the Construction Council on the one hand and the Union on the other covering employees of Respondent Shuck prevented Kieburtz from retaining his employment, it will be recommended that all Respondents, jointly and severally, make him whole for any loss he may have suffered as a result thereof by paying to Kieburtz an amount equal to that which he would have earned in employment with Shuck following July 31, 1953, until his employment would otherwise have terminated, less his net earnings during that period. Loss

of pay shall be determined by deducting from a sum equal to that which Kieburtz would normally have earned for each quarter or portion thereof his net earnings, if any, in other employment during that period. Earnings in one particular quarter shall have no effect upon the back pay liability for any other quarter. The quarterly periods described herein shall begin with the first day of January, April, July, and October.² It is recommended further that Respondent Shuck make available to the Board or its agents, upon request, payroll and other records necessary to or convenient for a computation of the amount of back pay due.

Because the unlawful contract provisions assented to by all Respondents have a purpose and tendency to restrict employment opportunity to members of the Union, it will be recommended that all Respondents immediately cease giving effect to the union security clause in the November 1950 contract and refrain in the future from contracting to such effect in respect to any employer whose operations are in commerce or affect commerce.

Upon the basis of the above findings of fact and upon the entire record in the case, I make the following:

Conclusions of Law

1. E. F. Shuck Construction Co., Inc., is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

² F. W. Woolworth Company, 90 NLRB 289.

2. Hod Carriers', Building and Common Laborers' Union, Local No. 242, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

3. By enforcing the unlawful provisions of the November 1950 contract, thus causing a discrimination in regard to the hire and tenure of employment of Richard B. Kieburtz, Respondent Shuck, Respondent General Contractors, and Respondent Construction Council have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

4. By such conduct the three Respondents named above have interfered with, restrained, and coerced employees in the exercise of rights guaranteed in Section 7 of the Act, in violation of Section 8 (a) (1) of the Act.

5. By enforcing the unlawful provisions of the November 1950 contract, thus causing Respondent Shuck to discriminate against Richard B. Kieburtz in respect to his tenure of employment, the Respondent Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (2) and Section 8 (b) (1) (A) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

Recommendations

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record in the case, I recommend that:

1. The Respondent E. F. Shuck Construction Co.,

Inc., Seattle, Washington, its officers, agents, successors, and assigns, shall:

(a) Cease and desist from:

(1) The practice of conditioning hire of applicants or tenure of employment in laborer or hod carrier positions upon clearance or approval by Hod Carriers', Building and Common Laborers' Union, Local No. 242, AFL, or any other labor organization unless under a nondiscriminatory arrangement permitted by Section 8 (a) (3) of the Act, as amended.

(2) Performing, enforcing, or giving effect to its contract of November 1950 with the above-named Union in respect to union security or entering into or enforcing any extension, renewal, modification, or supplement thereof, or any superseding agreement with the same Union or any other labor organization containing union security provisions, except as authorized by Section 8 (a) (3) of the Act.

(3) In any like or similar manner interfering with, restraining, or coercing employees in the right to self-organization, to form labor organizations, to join or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized by Section 8 (a) (3) of the Act.

(b) Take the following affirmative action which I find will effectuate the policies of the Act:

(1) Make whole Richard B. Kieburztz for any loss of pay he may have suffered by reason of the discrimination against him in the manner set forth in the section herein entitled "The remedy."

(2) Upon request make its records available to the Board to facilitate a back-pay computation.

(3) Post at each construction site in the jurisdiction covered by the Respondent Union in conspicuous places, including all places where notices to employees or prospective employees are customarily posted, copies of the notice attached hereto as Appendix A. Copies of said notice, to be furnished by the Regional Director for the Nineteenth Region, shall, after being duly signed by Respondent Shuck's representative, be posted by it immediately upon receipt thereof and be maintained by it for sixty (60) consecutive days thereafter. Reasonable steps shall be taken by it to insure that said notices are not altered, defaced, or covered by other material.

(4) Notify the Regional Director for the Nineteenth Region, in writing, within twenty (20) days from the date of receipt of this Intermediate Report and Recommended Order what steps the Respondent Shuck has taken in compliance herewith.

2. The Associated General Contractors of America, Seattle Chapter, Inc., and The Seattle Construction Council, the officers, agents, successors, and assigns of each, shall:

(a) Cease and desist from:

(1) Enforcing or giving effect to any agreement with the Respondent Union or any other labor organization which conditions the hire of applicants for employment or the retention of employees in employment with any employer whose operations are in or affect commerce upon clearance by the Respondent Union or any other labor organization, except under a nondiscriminatory arrangement permitted by Section 8 (a) (3) of the Act, as amended.

(2) In any like or similar manner interfering with, restraining, or coercing employees in the exercise of the right to self-organization, to form labor organizations, to join or assist any labor organization to bargain collectively through representatives of their own choosing, and to engage in collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8 (a) (3) of the Act.

(b) Take the following affirmative action which I find will effectuate the policies of the Act:

(1) Make whole Richard B. Kieburzt for any loss of pay he may have suffered by reason of the discrimination against him in the manner set forth in the section herein entitled "The remedy."

(2) Post at each construction site of E. F. Shuck Construction Co., Inc., within the jurisdiction of the

Respondent Union, in conspicuous places, including all places where notices to employees or prospective employees are customarily posted, copies of the notice attached hereto and marked Appendix B. Copies of said notice, to be furnished by the Regional Director for the Nineteenth Region, shall, after being duly signed by the Respondent General Contractors and the Respondent Construction Council, be posted by one of them immediately upon receipt thereof and be maintained by them for sixty (60) consecutive days thereafter. They shall take reasonable steps to insure that said notices are not altered, defaced, or covered by other material.

(3) Notify the Regional Director for the Nineteenth Region, in writing, within twenty (20) days from the date of receipt of this Intermediate Report and Recommended Order what steps the said Respondents have taken in compliance herewith.

3. The Respondent Hod Carriers', Building and Common Laborers' Union, Local No. 242, AFL, its officers, representatives, agents, successors, and assigns, shall:

(a) Cease and desist from:

(1) Performing or giving effect to its contract of November 1950 with the Respondents General Contractors and Construction Council covering employees of E. F. Shuck Construction Co., Inc., in respect to union security or entering into or enforcing any extension, renewal, modification, or supplement thereof which conditions the hire of applicants for employment upon clearance by the Union or any

other labor organization, except under a nondiscriminatory arrangement permitted by Section 8 (a) (3) of the Act, as amended.

(2) In any like or similar manner causing or attempting to cause the Respondent Shuck, the Respondent General Contractors, the Respondent Construction Council, or any other employer whose operations are in or affect commerce, to discriminate against any employee or prospective employee in violation of Section 8 (a) (3) of the Act.

(3) In any like or similar manner interfering with, restraining, or coercing employees in the exercise of the right to self-organization, to form labor organizations, to join or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in collective bargaining or other mutual aid or protection or to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8 (a) (3) of the Act.

(b) Take the following affirmative action which I find will effectuate the policies of the Act:

(1) Make whole Richard B. Kieburts for any loss of pay he may have suffered by reason of the discrimination against him in the manner set forth in the section herein entitled "The remedy."

(2) Post at its office in Seattle, Washington, and at each construction site of Respondent E. F. Shuck Construction Co., Inc., within the jurisdiction of the

Respondent Union, in conspicuous places, including all places where notices to employees or prospective employees are customarily posted, copies of the notice attached hereto and marked Appendix C. Copies of said notice, to be furnished by the Regional Director for the Nineteenth Region, shall, after having been duly signed by the Respondent Union's representative, be posted by it immediately upon receipt thereof and be maintained by it for sixty (60) consecutive days thereafter. Reasonable steps shall be taken by it to insure that said notices are not altered, defaced, or covered by any other material.

(3) Notify the Regional Director for the Nineteenth Region, in writing, within twenty (20) days from the date of receipt of this Intermediate Report and Recommended Order what steps Respondent Union has taken in compliance herewith.

It is finally recommended that unless within twenty (20) days from the date of receipt of this Intermediate Report and Recommended Order the several Respondents notify the said Regional Director, in writing, in respect to complying with the foregoing recommendations, the Board issue an order requiring any non-complying Respondent to take the aforesaid action.

Dated this 15th day of January, 1954.

/s/ WALLACE E. ROYSTER,
Trial Examiner

APPENDIX A

Notice to All Employees: Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will not maintain, give effect to, renew, or enforce any agreement with Hod Carriers', Building and Common Laborers' Union, Local No. 242, AFL, or any other labor organization covering our employees which requires job applicants to be members in good standing of any labor organization or to secure a work permit from any labor organization, nor will we maintain, renew, or enforce any agreement which contains union security provisions, except as authorized by Section 8 (a) (3) of the National Labor Relations Act, as amended.

We will not interfere with, restrain, or coerce our employees or prospective employees in the exercise of the right to self-organization to join or assist any labor organization or to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection or to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

We will make whole Richard B. Kieburtz for any

loss of pay suffered as a result of the discrimination against him.

All our employees and prospective employees are free to become or remain, or to refrain from becoming or remaining members of any labor organization, except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the Act.

E. F. SHUCK CONSTRUCTION
CO., INC.

(Employer)

Dated.....

By _____

(Representative)

(Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

APPENDIX B

Notice to All Employees of E. F. Shuck Construction Co., Inc.: Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify the employees and prospective employees of E. F. Shuck Construction Co., Inc., that:

We Will Not maintain, give effect to, renew, or enforce any agreement with Hod Carriers', Build-

ing and Common Laborers' Union, Local No. 242, AFL, or any other labor organization covering employees of E. F. Shuck Construction Co., Inc., which requires job applicants to be members in good standing of any labor organization or to secure a work permit from any labor organization, nor will we maintain, renew, or enforce any agreement covering employees of an employer whose operations are in or affect commerce which contains union security provisions, except as authorized by Section 8 (a) (3) of the National Labor Relations Act, as amended.

We Will Not interfere with, restrain, or coerce the employees or prospective employees of E. F. Shuck Construction Co., Inc., in the exercise of the right to self-organization, to form labor organizations, to join or assist any labor organization to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

We Will make whole Richard B. Kieburtz for any loss of pay suffered as a result of the discrimination against him.

All of the employees and prospective employees of E. F. Shuck Construction Co., Inc., are free to

become, to remain, or to refrain from becoming or remaining members of any labor organization, except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the Act.

THE ASSOCIATED GENERAL
CONTRACTORS OF AMERICA,
SEATTLE CHAPTER, INC.

Dated.....

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THE SEATTLE CONSTRUCTION
COUNCIL

Dated.....

By _____

(Representative)	(Title)
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This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

APPENDIX C

Notice to All Employees of E. F. Shuck Construction Co., Inc.: Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify the employees and prospective employees of E. F. Shuck Construction Co., Inc., that:

We Will Not maintain, give effect to, renew, enforce, or attempt to enforce any agreement between ourselves and The Associated General Contractors of America, Seattle Chapter, Inc., or The Seattle Construction Council, or E. F. Shuck Construction Co., Inc., which requires job applicants to be members in good standing of any labor organization or to secure a work permit from any labor organization, nor will we maintain, renew, or enforce any agreement which contains union security provisions covering employees of any employer whose operations are in or affect commerce, except as authorized by Section 8 (a) (3) of the National Labor Relations Act, as amended.

We Will Not cause or attempt to cause E. F. Shuck Construction Co., Inc., or any other employer whose operations are in commerce or affect commerce to discriminate against any employee or prospective employee, in violation of Section 8 (a) (3) of the Act.

We Will make whole Richard B. Kieburzt for any loss of pay suffered as a result of the discrimination against him.

HOD CARRIERS', BUILDING
AND COMMON LABORERS'
UNION, LOCAL NO. 242, AFL.
(Labor organization)

Dated.....

By.....

(Representative)

(Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Affidavit of Service and Postal Return Receipts Attached.

[Title of Board and Cause.]

EXCEPTIONS OF ASSOCIATED GENERAL
CONTRACTORS OF AMERICA, SEATTLE
CHAPTER, INC., to INTERMEDIATE RE-
PORT AND RECOMMENDED ORDER

Associated General Contractors of America and its affiliate, Seattle Construction Council, hereby except to the intermediate report and recommended order of examiner Wallace E. Royster, dated January 15, 1954, in the following particulars:

I.

Exception is taken to the statement on page 4 beginning in line 50 as follows:

“The contract running between the general contractors and the union covering the operations of Shuck contains a patently unlawful provision in regard to union security.”

Exception is further taken to the matter following the quoted statement down to and including line 15 on page 5. The reason for this exception is that the examiner wholly failed to take into consideration the fact that the contract was made for

an entire industry, a part of which affects commerce and a part of which does not, and the clause relative to employment of union labor is unlawful only if wrongfully applied to cases affecting commerce. The agreement, including Section 11 thereof, as given effect by the parties has held the union security clause inapplicable in any case affecting commerce, consequently the contract itself is not per se illegal.

II.

Exception is taken to the matter contained in the paragraph beginning on line 17, page 5, reading as follows:

“By such conditioning of employment and retention of employment upon membership in or approval by the union, those three respondents encouraged membership in the union and thereby violated Sec. 8(a)(3) of the Act.”

This paragraph implies that respondent, Associated General Contractors, conditioned employment and retention of employment upon union membership. There is no evidence to indicate that Associated General Contractors had anything to do with employment or retention of employment in this case.

III.

Exception is taken to the statement beginning in line 18 on page 6 as follows:

“Because this discrimination stemmed from a contractual relationship between Shuck and the union, and because the contract was the product of negotiations between the General Contractors and the

Construction Council, on the one hand, and the union on the other, I find that the General Contractors and the Construction Council to the same extent as Shuck, discriminated in regard to the hire and tenure of employment of Kieburtz, thus encouraging membership in the union and thereby violating Sec. 8(a)(3) of the Act.”

This statement is objected to because the contract itself was not illegal, but only its application, contrary to the intent of those who negotiated it, might be illegal, and there is no evidence that the Associated General Contractors or the Construction Council participated in the application of the union security clause in the instant case.

IV.

Exception is taken to the paragraph beginning on page 6 in line 33, as follows:

“By the discharge of Kieburtz the respondent Shuck, the General Contractors, and the Construction Council interfered with, restrained and coerced an employee in the exercise of his rights guaranteed in Sec. 7 of the Act and thereby violated Sec. 8-A1 of the Act.”

This paragraph is objected to because there is no evidence that the General Contractors or the Construction Council had anything to do with the discharge of Kieburtz.

V.

Exception is taken to the findings under subdivision III starting on line 54, page 6, to the effect

that the activities of the respondents had a close, intimate and substantial relation to trade, traffic and commerce. This exception is based upon the fact that there is no evidence and no finding of fact to sustain the conclusion arrived at.

VI.

Exception is taken to the recommendation contained in the first paragraph under subdivision IV to the effect that the respondents jointly and severally *made* Kieburtz whole from any loss he may have suffered. This exception is taken because there is no authority to hold the Associated General Contractors or the Seattle Construction Council liable for any loss which Kieburtz may have suffered.

VII.

Exception is taken to the paragraph beginning on line 30, page 7, insofar as it recommends that all respondents immediately cease giving effect to the union security clause since said language implies that Associated General Contractors and Seattle Construction Council have been giving effect to the union security clause, which is not sustained by the evidence.

VIII.

Exception is taken to conclusion of law 3 insofar as it finds that General Contractors and Construction Council have enforced the union security provision of the contract, or have engaged in an unfair labor practice since there is no evidence or com-

petent finding to support the conclusion that the General Contractors or the Construction Council have enforced in any way the union security clause, or have engaged in any unfair labor practice.

IX.

Exception is taken to conclusion of law 4 since there is no evidence that any contract of Associated General Contractors or Construction Council has interfered with, restrained, or coerced any employee.

X.

Exception is taken to the whole of recommendation 2, beginning on page 9, line 13, respecting recommended action of the Associated General Contractors and Seattle Construction Council, first, because the recommendation implies that they are now engaging in the actions from which they are ordered to cease and desist, which implication is contrary to the evidence; second, because there is no legal obligation upon the part of these respondents to reimburse Mr. Kiebertz for his loss; third, because these respondents have no control over the construction sites of E. F. Shuck and no means of seeing that notices posted there shall remain for any required period.

XI.

Exception is also taken to the Intermediate Report and Recommended Order for the reason that it undertakes to assume jurisdiction over Associated General Contractors and Seattle Construction

Council upon the basis of an act, namely, the negotiation of a contract, which was performed more than six months prior to the filing of the charge herein, and there is no evidence to sustain any finding that the Associated General Contractors or Seattle Construction Council performed any act, or enforced any contract, within six months prior to the filing of the charge herein. As required in Sec. 10 (b) of the National Labor Relations Act as a condition to jurisdiction.

XII.

Exception is taken to any order against Associated General Contractors or Seattle Construction Council for the reason that it is not found that either of them is an employer within the meaning of the National Labor Relations Act.

LYCETTE, DIAMOND &
SYLVESTER,

Attorneys for Associated General Contractors of
America, Seattle Chapter, Inc., and Seattle
Construction Council.

GENERAL COUNSEL'S EXHIBIT No. 1

[Part 2]

[Title of Board and Cause.]

ORDER REMANDING PROCEEDING TO RE-
GIONAL DIRECTOR FOR FURTHER
HEARING

On January 15, 1954, the Trial Examiner issued his Intermediate Report in the above-entitled pro-

ceeding, and on the same day the proceeding was transferred to the Board. On February 5, 1954, the Respondent Union filed exceptions thereto, and a supporting brief. Thereafter, on September 7, 1954, the General Counsel moved the Board to make definite the Trial Examiner's findings of fact with respect to the effect of the Respondents' operations upon interstate commerce, or, in the alternative, that this proceeding be remanded for further hearing to receive more specific evidence of the extent of the operations of each Respondent in relation to their effect upon interstate commerce. The Board having duly considered the matter, and it being apparent from the Intermediate Report that the Trial Examiner predicated his jurisdictional findings on the Board's former standards,

It Is Hereby Ordered that the record in this proceeding be reopened and that a further hearing be held before a Trial Examiner for the purpose of obtaining additional commerce data; and

It Is Further Ordered that this proceeding be remanded to the Regional Director for the Nineteenth Region for the purpose of arranging such further hearing, and that the said Regional Director be, and he hereby is, authorized to issue notice thereof; and

It Is Further Ordered that, upon the conclusion of the hearing, (unless the parties waive their rights thereto), the Trial Examiner shall prepare and serve upon the parties a Supplemental Intermediate Report containing findings of fact upon the evidence received pursuant to the provisions of

this order, and that following service of such Supplemental Intermediate Report upon the parties, the provisions of Section 102.46 of the Board's Rules and Regulations shall be applicable.

Dated, Washington, D. C., February 9, 1955.

By direction of the Board:

FRANK M. KLEILER

Executive Secretary

Affidavit of Service and Postal Return Receipts Attached.

[Title of Board and Cause.]

SUPPLEMENTAL INTERMEDIATE REPORT

Melton Boyd, for the General Counsel. Lycette, Diamond & Sylvester, by Lyle Iversen, of Seattle, Wash., for the AGC. Arthur S. Quigley, of Seattle, Wash., for Shuck. Roy E. Jackson, of Seattle, Wash., for the Union.

Before: Martin S. Bennett, Trial Examiner.

An Intermediate Report and Recommended Order in the above-entitled case having been issued by Trial Examiner Wallace E. Royster on January 15, 1954, exceptions were filed thereto by Respondent AGC, and, on September 7, 1954, the General Counsel moved, inter alia, that¹ the proceeding be

¹ The Board's order of remand, described below, inadvertently, it appears, attributes these exceptions to Hod Carriers, Building and Common Laborers Union, Local No. 242, Respondent Union.

remanded for further hearings with respect to the effect of Respondents' operations upon interstate commerce.

On February 9, 1955, the Board ordered that the record in the proceeding be reopened, that a further hearing be held before a Trial Examiner for the purpose of obtaining additional commerce data, and that "the Trial Examiner shall prepare and serve upon the parties a Supplemental Intermediate Report containing findings of fact upon the evidence pursuant to the provisions of this order * * * "

Pursuant to notice, a further hearing was held consonant with the foregoing order before the undersigned Trial Examiner at Seattle, Washington, on March 4, 1955. All the parties were represented by counsel, participated in the hearing, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to develop evidence bearing upon the issue. One of the appearances was made for "the witness Shuck." Counsel stated further that "I have questioned, there being no appeal, that I am appearing for the Shuck Company at this hearing." I find that Respondent, E. F. Shuck Construction Co., Inc., was duly served with notice of this hearing and that appearance was made by the same counsel that represented that Respondent at the original hearing. At the outset of the hearing I denied a motion by Respondent AGC that I restrict my function in this proceeding solely to presiding over the taking of testimony and that I refrain from making findings

of fact. At the close of the hearing the parties were given an opportunity to argue orally and to file briefs. Oral argument was presented and briefs were waived.

Upon the record in the case, and from my observation of the witnesses, I make the following:

Findings of Fact²

Seattle Construction Council is a division of the Seattle Chapter of the Associated General Contractors of America, whose members are engaged in specialty contracting as contrasted with general contracting work.

The Seattle Chapter of the AGC has for some years, as its prime purpose, engaged in collective bargaining with labor organizations in behalf of its members, all contracting firms in Seattle and surrounding areas in the State of Washington, and signs association-wide agreements with labor organizations in behalf of such members.

The construction work performed by the members of the Seattle Chapter is in excess of \$100,000,000 per annum. Of this, at least 10 percent represents work performed outside the State of Washington by the Washington contractors who belong to this Chapter. Such was the case in 1953

² The findings of fact which follow are based solely upon the evidence developed in the hearing held before me, the order of the Board having stated that the Supplemental Intermediate Report should contain "findings of fact upon the evidence received pursuant to the provisions of this order."

as it is at present. In fact, one of the members of the Chapter, not individually involved herein, commenced a \$40,000,000 construction project in the Territory of Alaska during 1953.

In addition, during 1953, various members of the Seattle Chapter of AGC, not individually involved herein, engaged in construction directly involved with the national defense effort. These projects were carried out under direct contracts with the U. S. Government, and included, in the State of Washington, construction of a powder magazine for the U. S. Navy, a contract in the amount of \$1,397,000; a boat storage plant for the U. S. Navy, a contract in the amount of \$1,321,000; transmitter facilities for the Atomic Energy Commission, a contract in the amount of \$437,000; and, a later phase of the last described construction, a contract in the amount of \$1,278,000.

Respondents stress herein the fact that the roster of members of the Seattle Chapter in 1953 included "E. F. Shuck" but not "E. F. Shuck Construction Co., Inc.," the latter named as a respondent herein. The current roster of the membership lists this business concern in its corporate name which is identical with the description of this Respondent in the complaint.

The fact of the matter is that since 1949, Shuck has not engaged in the construction business as an individual entrepreneur. E. F. Shuck, Sr., as an individual was engaged in building construction for a number of years. It appears that he belonged to the Seattle Chapter in this capacity as an indi-

vidual. In 1949, the business was incorporated and continued to function in substantially the same line of endeavor. Although connected with the corporation, as is his son, Shuck's precise interest in the corporation, whether complete or partial, is not disclosed.

Membership by this business entity in the Seattle Chapter was continued and annual dues therein have been paid by the corporation since 1949. E. F. Shuck, Sr., is active in the corporate business and, according to his testimony, he has not engaged in the construction or contracting business as an individual since 1949. Nor is he engaged in any other commercial venture as an individual at the premises of Respondent, E. F. Shuck Construction Co., Inc., Shuck considers the dues paid to the Seattle Chapter by the company bearing his name to be a corporate expense. In fact, he did not contend in his testimony that he was engaged in any business venture, construction or otherwise, as an individual.

It is clear that Seattle Chapter of AGC has until the present year continued to list Shuck as a member in his individual capacity, although it does bargain for all its members and this bargaining since 1949 has perforce included the corporate respondent herein. The testimony of Colton Harper, assistant member of the Seattle Chapter, discloses that this minor disparity has existed for this period of years primarily because of inertia, namely, the failure of the member to take steps to amend the registration.

Harper testified that construction companies are

constantly incorporating or changing their form of doing business, but that the usual procedure to accomplish a change of registration is for the member to write to the Seattle Chapter and request the change of name. In this case, although Shuck incorporated in 1949 and has been represented in collective bargaining in that corporate capacity since 1949 by the Seattle Chapter, no steps were taken to procure the change of name until recently.

It would appear from the foregoing that the operations of all the named Respondents herein fall within the Board's jurisdiction. *N. L. R. B. v. Gottfried Baking Co., Inc.*, 210 F. 2d 772 (C. A. 2); *Leonard v. N. L. R. B.*, 197 F. 2d 435, 205 F. 2d 355 (C. A. 9); *Katz v. N. L. R. B.*, 196 F. 2d 411 (C. A. 9); *Motor Truck Association of Southern California*, 110 NLRB No. 263; *Insulation Contractors of Southern California, Inc.*, 110 NLRB No. 105; *Capital Bear Distributors Association*, 109 NLRB No. 36; and *Niagra Beer Distributors Association*, 108 NLRB 2217. However, as I construe the Board's order relative to this hearing, any conclusions of law or recommendations by the undersigned would be beyond the scope of the remand. Therefore, none are made herein.

Dated this 14th day of April, 1955.

/s/ MARTIN S. BENNETT
Trial Examiner

Affidavit of Service and Postal Return Receipts
Attached.

[Title of Board and Cause.]

EXCEPTIONS OF ASSOCIATED GENERAL
CONTRACTORS OF AMERICA, SEATTLE
CHAPTER, INC., TO SUPPLEMENTAL
INTERMEDIATE REPORT

Associated General Contractors of America and its affiliate, Seattle Construction Council, hereby except to the supplemental intermediate report of examiner Martin S. Bennett, dated April 14, 1955 in the following particulars:

I.

Exception is taken to the entire proceeding for the reason that at the supplemental hearing the entire subject matter of the proceeding was not before the examiner, and a fair picture of the situation could not be presented under the circumstances.

II.

Exception is taken to the intermediate report for the reason that no ruling was made upon motions presented to the examiner for the reinstatement of other respondents, namely, Hod Carriers, Building & Common Laborers, Union Local No. 242 AFL, and E. F. Shuck Construction Co., Inc., as active parties for all purposes of further proceedings in the matter.

III.

Exception is taken to the second paragraph of

Findings of Fact on page 2, beginning on line 32, to the extent that the finding recites that the prime purpose of the Seattle Chapter of AGC has been collective bargaining with labor organizations. This exception is made for the reason that there is no evidence to indicate that this is the prime purpose of the Seattle Chapter and said recital is contrary to the fact, since Seattle Chapter, Associated General Contractors, has many other purposes and collective bargaining with labor organizations is only one of its purposes.

IV.

Exception is taken to the fourth paragraph on page 3 of the Findings insofar as it recites that bargaining of Seattle Chapter of AGC has been on behalf of members including the corporate defendant herein. Further exception is made to said paragraph insofar as it speaks of the membership of E. F. Shuck personally, rather than the corporate defendant herein as a minor disparity. This exception is made for the reason that these conclusions are not supported by the evidence and in fact there is no evidence that the corporate defendant, E. F. Shuck Construction Co., Inc. is or ever was a member of the Associated General Contractors, Seattle Chapter, and said corporate defendant is a separate entity from the member who is Mr. E. F. Shuck, personally, and there is no evidence that negotiations were conducted for non-members or that the difference between the individual and the corporation is a minor disparity.

V.

Exception is taken to the fifth paragraph on page 3 of the Findings insofar as it recites that Shuck, Inc. has been represented in the collective bargaining in its corporate capacity by the Seattle Chapter for the reason that there is no testimony to indicate that the corporation has been represented by the Seattle Chapter.

VI.

Exception is taken to the last paragraph beginning on page 3 of the Findings insofar as it finds that the Seattle Chapter, Associated General Contractors falls within the Board's jurisdiction. This exception is based upon the fact that the conclusion here arrived at is not supported by any of the previous findings, nor by the testimony inasmuch as it clearly appears from the testimony that this respondent is not an employer as defined in the National Labor Relations Act.

VII.

Exception is taken to the supplemental intermediate report for the reason that the same fails to make a finding to the effect that this respondent negotiates for both employers engaged in business not affecting commerce and employers engaged in business affecting commerce, although the evidence clearly shows without contradiction that a portion of this respondent's membership engage in strictly local business.

VIII.

Exception is taken to the supplemental intermediate report for the reason that the same results in a finding that the Board has jurisdiction over this respondent, although no evidence was produced to establish that this respondent as distinguished from its members is engaged in commerce or that its business in commerce amounts to \$50,000.00 a year or any other sum.

LYCETTE, DIAMOND & SYLVESTER
Attorneys for Associated General Contractors of
America, Seattle Chapter, Inc. and Seattle
Construction Council

/s/ By LYLE L. IVERSEN

Affidavit of Service Attached.

United States of America

Before the National Labor Relations Board

Case No. 19-CA-851

Case No. 19-CB-261

E. F. Shuck Construction Co. Inc. and The Associated General Contractors of America, Seattle Chapter, Inc. and The Seattle Construction Council Hod Carriers, Building and Common Laborers Union, Local No. 242, AFL and Richard B. Kieburtz, an Individual

DECISION AND ORDER

On January 15, 1954, Trial Examiner Wallace E. Royster issued his Intermediate Report in the

above-entitled proceeding, finding that the Respondents had engaged in certain unfair labor practices within the meaning of the Act, and recommending that they cease and desist therefrom, and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, Respondents Associated General Contractors of America, Seattle Chapter, Inc. and Seattle Construction Council filed exceptions to the Intermediate Report and a supporting brief. On February 9, 1955, the Board ordered that the record in the proceeding be reopened, that a further hearing be held before a Trial Examiner for the purpose of obtaining additional commerce data, and that "the Trial Examiner shall prepare and serve upon the parties a Supplemental Intermediate Report containing findings of fact upon the evidence pursuant to the provisions of this order." On April 14, 1955, Trial Examiner Martin S. Bennett issued his Supplemental Intermediate Report in the above-entitled proceedings setting forth his findings of fact pursuant to the provisions of the order of the Board issued February 9, 1955. Thereafter, Respondents Associated General Contractors of America, Seattle Chapter, Inc. and Seattle Construction Council filed exceptions to the Supplemental Intermediate Report and a supporting brief.

The Board has reviewed the rulings of the Trial Examiners made at the initial hearing and the supplemental hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.

The Board has considered the Intermediate Report, the Supplemental Intermediate Report, the exceptions to both the Intermediate and Supplemental Intermediate Reports, and the briefs in support of the exceptions, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiners, with the following additions:

It appears from the findings of fact made in the Supplemental Intermediate Report that the construction work performed by members of the Seattle Chapter of the Associated General Contractors of America is in excess of \$100,000,000 a year, and that of this amount, at least 10 percent represents work performed outside the State of Washington by the Washington contractors who belong to this Chapter. It also appears that during 1953, various members of the Seattle Chapter of the Associated General Contractors engaged in construction within the State of Washington, directly involved in the national defense effort, including projects under direct contracts with the United States Government, i.e., construction of a powder magazine for the Navy in the sum of \$1,397,000; a boat storage plant for the Navy in the sum of \$1,321,000; and transmitter facilities for the Atomic Energy Commission in the sums of \$437,000 and \$1,278,000, respectively.

On the basis of the foregoing, we find that the operations of all the named Respondents herein fall within the Board's jurisdiction and that it will

effectuate the policies of the Act to assert jurisdiction herein.¹

In agreement with the Trial Examiner in the original proceeding, we find that by the discharge of Kieburtz, the Respondent Shuck discriminated in regard to his hire and tenure of employment, thus encouraging membership in the Union, and thereby violating Section 8 (a) (3) of the Act; that by giving effect to the unlawful union-security provision in the contract, the Respondent Union caused Shuck to discriminate in regard to the hire and tenure of employment, in violation of Section 8 (a) (3), and thereby violated Section 8 (b) (2) of the Act; by such conduct Respondents Shuck, the Associated General Contractors and the Seattle Construction Council interfered with, restrained, and coerced employees in the exercise of rights guaranteed in Section 7 of the Act, and thereby violated Section 8 (a) (1) of the Act; and that the Respondent Union thereby restrained and coerced employees in the exercise of rights guaranteed in Section 7 of the Act and thereby violated Section 8 (b) (1)

¹ Motor Truck Association, 110 NLRB 2151; Capital Beer Distributors, 109 NLRB 178; Niagara Beer Distributors, 108 NLRB 2217; Insulation Contractors, 110 NLRB 638. In Insulation Contractors, the Board stated:

Although the Board has recently announced new minimum requirements for the assertion of its jurisdiction, we will adhere to our past practice of considering all association members who participate in multi-employer bargaining as a single employer for jurisdictional purposes.

(A) of the Act. We further find, as did the Trial Examiner in the original proceeding, that as the discrimination found hereinabove stemmed from a contractual relationship between Shuck and the Union, and because the contract was the product of negotiations between the Associated General Contractors and the Seattle Construction Council on the one hand and the Union on the other, that the Associated General Contractors and the Seattle Construction Council discriminated in regard to the hire and tenure of employment of Kieburtz to the same extent as Shuck, thus encouraging membership in the Union and thereby violating Section 8 (a) (3) of the Act.²

Order

Upon the entire record in these cases, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders:

1. The Respondent E. F. Shuck Construction

² See *George D. Auchter Co.*, 102 NLRB 881, enforced 209 F.2d 273 (C. A. 5). With respect to the Respondents' contention that the roster of members of the Seattle Chapter of the Associated General Contractors in 1953 included "E. F. Shuck" but not "E. F. Shuck Construction Co. Inc.," it seems clear that the business was incorporated as far back as 1949 and that it has been represented in collective bargaining by the Seattle Chapter in that corporate capacity. The record evidence adequately supports the factual findings made in the Supplemental Intermediate Report.

Co. Inc., Seattle, Washington, its officers, agents, successors, and assigns, shall:

(a) Cease and desist from:

(1) The practice of conditioning hire of applicants or tenure of employment in laborer or hod carrier positions upon clearance or approval by Hod Carriers', Building and Common Laborers' Union, Local No. 242, AFL, or any other labor organization except under an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8 (a) (3) of the Act, as amended;

(2) Performing, enforcing, or giving effect to its contract of November 1950 with the above-named Union in respect to union security or entering into or enforcing any extension, renewal, modification, or supplement thereof, or any superseding agreement with the same Union or any other labor organization containing union-security provisions, except as authorized by Section 8 (a) (3) of the Act, as amended;

(3) In any like or similar manner interfering with, restraining, or coercing employees in the right of self-organization, to form labor organizations, to join or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a

condition of employment, as authorized by Section 8 (a) (3) of the Act, as amended.

(b) Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(1) Make whole Richard B. Kieburz for any loss of pay he may have suffered by reason of the discrimination against him in the manner set forth in the section of the Intermediate Report entitled "The Remedy";

(2) Preserve and make available to the Board or its agents upon request, for examination and copying, all payroll records, social-security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts of back pay due and the rights of employment under the terms of this Order;

(3) Post at each construction site in the jurisdiction covered by the Respondent Union in conspicuous places, including all places where notices to employees or prospective employees are customarily posted, copies of the notice attached to the Intermediate Report as Appendix A.³ Copies of

³ This notice, however, shall be, and it hereby is, amended by striking from the first paragraph thereof the words "The Recommendations of a Trial Examination" and substituting in lieu thereof the words "A Decision and Order." In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

said notice, to be furnished by the Regional Director for the Nineteenth Region, shall, after being duly signed by Respondent Shuck's representative, be posted by it immediately upon receipt thereof and be maintained by it for sixty (60) consecutive days thereafter. Reasonable steps shall be taken by it to insure that said notices are not altered, defaced, or covered by other material;

(4) Notify the Regional Director for the Nineteenth Region, in writing, within ten (10) days from the date of this Order what steps Respondent Shuck has taken to comply herewith.

2. The Associated General Contractors of America, Seattle Chapter, Inc., and The Seattle Construction Council, the officers, agents, successors, and assigns of each, shall:

(a) Cease and desist from:

(1) Enforcing or giving effect to any agreement with the Respondent Union or any other labor organization which conditions the hire of applicants for employment or the retention of employees in employment with any employer whose operations are in or affect commerce upon clearance by the Respondent Union or any other labor organization, except under an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8 (a) (3) of the Act, as amended;

(2) In like or similar manner interfering with, restraining, or coercing employees in the exercise of the right of self-organization, to form labor or-

ganizations, to join or assist any labor organization to bargain collectively through representatives of their own choosing, and to engage in collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8 (a) (3) of the Act, as amended.

(b) Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(1) Make whole Richard B. Kieburz for any loss of pay he may have suffered by reason of the discrimination against him in the manner set forth in the section of the Intermediate Report entitled "The Remedy."

(2) Post at each construction site of E. F. Shuck Construction Co. Inc., within the jurisdiction of the Respondent Union, in conspicuous places, including all places where notices to employees or prospective employees are customarily posted, copies of the notice attached to the Intermediate Report as Appendix B.⁴ Copies of said notice, to be furnished by the Regional Director for the Nineteenth Region, shall, after being duly signed by Respondent Associated General Contractors and Respondent Seattle Construction Council, be posted by one of them immediately upon receipt

⁴ See footnote 3 for amendments to notice attached to Intermediate Report as Appendix B.

thereof and maintained by them for sixty (60) consecutive days thereafter. They shall take reasonable steps to insure that said notices are not altered, defaced, or covered by other material;

(3) Notify the Regional Director for the Nineteenth Region, in writing, within twenty (20) days from the date of this Order what steps the said Respondents have taken to comply herewith.

3. Respondent Hod Carriers', Building and Common Laborers' Union, Local No. 242, AFL, its officers, representatives, agents, successors, and assigns, shall:

(a) Cease and desist from:

(1) Performing or giving effect to its contract of November 1950 with the Respondents Associated General Contractors and Seattle Construction Council covering employees of E. F. Shuck Construction Co. Inc., in respect to union security or entering into or enforcing any extension, renewal, modification, or supplement thereof which conditions the hire of applicants for employment upon clearance by the Union or any other labor organization, except under an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8 (a) (3) of the Act, as amended;

(2) In like or similar manner causing or attempting to cause Respondent Shuck, Respondent Associated General Contractors, Respondent Seattle Construction Council or any other employer whose operations are in or affect commerce, to discrimi-

nate against any employee or prospective employee in violation of Section 8 (a) (3) of the Act, as amended;

(3) In like or similar manner straining or coercing employees in the exercise of the right of self-organization, to form labor organizations, to join or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in collective bargaining or other mutual aid or protection or to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8 (a) (3) of the Act, as amended.

(b) Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(1) Make whole Richard B. Kieburtz for any loss of pay he may have suffered by reason of the discrimination against him in the manner set forth in the section of the Intermediate Report entitled "The Remedy."

(2) Post at its office in Seattle, Washington, and at each construction site of Respondent E. F. Shuck Construction Co. Inc., within the jurisdiction of the Respondent Union, in conspicuous places, including all places where notices to employees or prospective employees are customarily posted, copies of the notice attached to the Inter-

mediate Report as Appendix C.⁵ Copies of said notice, to be furnished by the Regional Director for the Nineteenth Region, shall, after having been duly signed by the Respondent Union's representative, be posted by it immediately upon receipt thereof and be maintained by it for sixty (60) consecutive days thereafter. Reasonable steps shall be taken by it to insure that the said notices are not altered, defaced, or covered by any other material.

(3) Notify the Regional Director for the Nineteenth Region, in writing, within ten (10) days from the date of this Order what steps Respondent Union has taken to comply herewith.

Dated, Washington, D. C., October 28, 1955.

[Seal] PHILIP RAY RODGERS,
 Acting Chairman.

IVAR H. PETERSON, Member.

BOYD LEEDOM, Member.

National Labor Relations Board.

Affidavit of Mail and Return Postal Return Receipts Attached.

⁵ See footnote 3 for amendments to notice attached to Intermediate Report as Appendix C.

In the United States Court of Appeals
for the Ninth Circuit

No. 15084

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

E. F. SHUCK CONSTRUCTION CO., INC.; THE
ASSOCIATED GENERAL CONTRACTORS
OF AMERICA, SEATTLE CHAPTER, INC.
AND THE SEATTLE CONSTRUCTION
COUNCIL; AND HOD CARRIERS', BUILD-
ING and COMMON LABORERS' UNION,
LOCAL NO. 242, AFL,

Respondents.

CERTIFICATE OF THE NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.84, Rules and Regulations of the National Labor Relations Board—Series 6, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a consolidated proceeding had before said Board, entitled "E. F. Shuck Construction Co. Inc. and The Associated General Contractors of America, Seattle Chapter, Inc. and The Seattle Construction Council" and "Hod Carriers, Building and Common Laborers Union, Local No. 242, AFL and Richard B. Kieburtz, an Individual," the same be-

ing known as Case Nos. 19-CA-851 and 19-CB-261 respectively before said Board, such transcript includes the pleadings and testimony and evidence upon which the order of the Board in said consolidated proceeding was entered, and includes also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Stenographic transcript of testimony taken before Trial Examiner Wallace E. Royster on October 29 and 30, 1953, together with all exhibits introduced in evidence.

2. Copy of Trial Examiner Royster's Intermediate Report and Recommended Order (annexed to item 9 hereof); copy of Order transferring cases to the National Labor Relations Board, both issued on January 15, 1954, together with affidavit of service and United States Post Office return receipts thereof.

3. Combined Exceptions of Respondents Associated General Contractors of America, Seattle Chapter, Inc. and The Seattle Construction Council¹ to the Trial Examiner's Intermediate Report and Recommended Order, received by the Board on February 5, 1954.

4. General Counsel's motion to make definite commerce findings, or, in the alternative to remand

¹ Inadvertently referred to in Board's Order remanding proceeding for further hearing as exceptions of Hod Carriers', Building and Common Laborers Union, Local No. 242, AFL, Respondent Union herein.

the case for further hearing to receive more specific evidence in regard to commerce, received by the Board on September 7, 1954. (Granted—see Board's Order remanding proceeding to Regional Director for Further Hearing.)

5. Affidavit of service of Board's Order remanding proceeding to Regional Director for Further Hearing dated February 9, 1955, together with United States Post Office return receipts thereof. (Order remanding proceeding is marked General Counsel's Exhibit 1—Part 2, and is contained in Volume V of the Certified Record.)

6. Stenographic transcript of testimony taken before Trial Examiner Martin S. Bennett in further hearing held on March 4, 1955, pursuant to remand, together with all exhibits introduced in evidence.

7. Copy of Trial Examiner Bennett's Supplemental Intermediate Report (annexed to item 9 hereof); copy of Order transferring cases to the National Labor Relations Board, both issued on April 14, 1955, together with affidavit of service and United States Post Office return receipts thereof.

8. Combined Exceptions of Respondents Associated General Contractors of America, Seattle Chapter, Inc. and The Seattle Construction Council to the Trial Examiner's Supplemental Intermediate Report, received by the Board on May 5, 1955.

9. Copy of Decision and Order issued by the National Labor Relations Board on October 28, 1955, with copies of Intermediate Report and Supplemental Intermediate Report annexed, together

with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 7th day of May, 1956.

[Seal] /s/ FRANK M. KLEILER,
Executive Secretary, National
Labor Relations Board.

[Endorsed]: No. 15084. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. E. F. Shuck Construction Co., Inc., The Associated General Contractors of America, Seattle Chapter, Inc., The Seattle Construction Council and Hod Carriers' Building and Common Laborers' Union, Local No. 242, AFL., Respondents, and Associated General Contractors of America, Seattle Chapter, Inc., and its affiliate Seattle Construction Council, Petitioners, vs. National Labor Relations Board, Respondent. Transcript of Record. Petition for Enforcement and Petition for Review of Order of the National Labor Relations Board.

Filed: May 11, 1956.

 /s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15084

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

E. F. SHUCK CONSTRUCTION CO. INC.; THE
ASSOCIATED GENERAL CONTRACTORS
OF AMERICA, SEATTLE CHAPTER, INC.
AND THE SEATTLE CONSTRUCTION
COUNCIL; AND HOD CARRIERS', BUILD-
ING AND COMMON LABORERS' UNION,
LOCAL NO. 242, AFL, Respondents.

PETITION FOR ENFORCEMENT OF AN OR-
DER OF THE NATIONAL LABOR RELA-
TIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to
the National Labor Relations Act, as amended (61
Stat. 136, 29 U.S.C., Secs. 151, et seq.), hereinafter
called the Act, respectfully petitions this Court for
the enforcement of its order against Respondents,
E. F. Shuck Construction Co., Inc., Seattle, Wash-
ington (hereinafter called Respondent Company),
its officers, agents, successors, and assigns; The As-

sociated General Contractors of America, Seattle Chapter, Inc. (hereinafter called Respondent AGC), and The Seattle Construction Council (hereinafter called Respondent Construction Council), the officers, agents, successors, and assigns of each; and Hod Carriers', Building and Common Laborers' Union, Local 242, AFL (hereinafter called Respondent Union), its officers, representatives, agents, successors, and assigns. The consolidated proceeding resulting in said order is known upon the records of the Board as "E. F. Shuck Construction Co. Inc. and The Associated General Contractors of America, Seattle Chapter, Inc. and The Seattle Construction Council, Case No. 19-CA-851" and "Hod Carriers, Building and Common Laborers Union, Local No. 242, AFL and Richard B. Kiebertz, an Individual, Case No. 19-CB-261."

In support of this petition the Board respectfully shows:

(1) Respondent Company is a Washington corporation engaged in business in the State of Washington, Respondents AGC and Construction Council are engaged in negotiating collective bargaining agreements with labor organizations on behalf of their members in the State of Washington, and Respondent Union is a labor organization engaged in promoting and protecting the interests of its members in the State of Washington, all within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the

National Labor Relations Act, as amended.

(2) Upon due proceeding had before the Board in said matter, the Board on October 28, 1955, duly stated its findings of fact and conclusions of law, and issued an Order directed to Respondent Company, its officers, agents, successors, and assigns; Respondents AGC and Construction Council, the officers, agents, successors, and assigns of each; and Respondent Union, its officers, representatives, agents, successors, and assigns. On the same date, the Board's Decision and Order was served upon Respondents by sending copies thereof postpaid, bearing Government frank, by registered mail, to Respondents' Counsel.

(3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the consolidated proceeding before the Board upon which the said Order was entered, which transcript includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondents and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a decree enforcing in whole said Order of the Board, and requiring

Respondent Company, its officers, agents, successors, and assigns; Respondents AGC and Construction Council, the officers, agents, successors, and assigns of each; and Respondent Union, its officers, representatives, agents, successors, and assigns, to comply therewith.

Dated at Washington, D. C., this 29th day of March, 1956.

/s/ MARCEL MALLET-PREVOST,
Assistant General Counsel, National
Labor Relations Board.

Certificate of Service Attached.

[Endorsed]: Filed Apr. 2, 1956. Paul P. O'Brien,
Clerk.

[Title of U. S. Court of Appeals and Cause.]

ANSWER AND PETITION FOR REVIEW OF
ASSOCIATED GENERAL CONTRACTORS
OF AMERICA, SEATTLE CHAPTER, INC.,
AND THE SEATTLE CONSTRUCTION
COUNCIL

To the Honorable Judges of the United States
Court of Appeals for the Ninth Circuit:

Associated General Contractors of America, Seattle Chapter, Inc. and its affiliate, Seattle Construction Council, hereby answers the Petition for En-

forcement heretofore filed by the National Labor Relations Board, and petitions for a review by this court of the proceedings of the National Labor Relations Board and the order of said Board in this matter. Answering the allegations of the Petition for Enforcement, this respondent alleges:

I.

Answering Paragraph (1) of the Petition, this respondent states, Seattle Chapter, Associated General Contractors of America, is a Washington corporation, functioning as a business association to advance the common good of its members, and among its other activities, it represents its members in industrywide collective bargaining with labor organizations. This respondent carries on its activities within the Ninth Circuit. Except as specifically admitted herein, the allegations of Paragraph (1) of the Petition for Enforcement are denied.

II.

Answering Paragraph (2) of the Petition, this respondent admits the entry of an order by the National Labor Relations Board as therein alleged, and that the same was served upon it, but denies that said order was legal or valid.

III.

Answering Paragraph (3) of the Petition for Enforcement, this respondent admits the same.

Petition for Review

This respondent petitions this court to review the Order of the National Labor Relations Board in the Consolidated cases before it designated Case No. 19-CA-851 and 19-CB-261 insofar as said Order was directed against this respondent.

I.

This Petition for Review is made pursuant to the provisions of subparagraph (f) of Section 160, entitled 29 United States Code. This respondent alleges that the transcript which will be filed by the National Labor Relations Board in connection with its Petition for Enforcement will be the same transcript as would be involved in this Petition for Review.

II.

Seattle Construction Council is the name of an activity of Seattle Chapter, Associated General Contractors of America, and is not a separate entity, and Seattle Chapter and Seattle Construction Council are one and the same.

III.

The Order of the National Labor Relations Board is invalid and erroneous for the following reasons:

This respondent is not subject to the jurisdiction of the National Labor Relations Board and is not and at no time material hereto, was it an employer within the meaning of the National Labor Relations Act, nor was it engaged in commerce.

The procedure was not commenced within the time limited by law, particularly Section 10 (d) of the National Labor Relations Act.

It was not shown that the alleged unfair labor practice affected commerce.

It was not established that this respondent engaged in any unfair labor practice.

The findings of the National Labor Relations Board do not support the Order which it entered against this respondent, and it committed error in entering the Order it did.

Wherefore, this respondent prays that the Order of the National Labor Relations Board be reviewed and set aside as to it, and that the Petition for Enforcement be denied.

LYCETTE, DIAMOND &
SYLVESTER,

/s/ By LYLE L. IVERSEN,

Attorneys for Associated General Contractors of
America, Seattle Chapter, Inc., and Seattle
Construction Council.

[Endorsed]: Filed Apr. 20, 1956. Paul P. O'Brien,
Clerk.

[Title of U. S. Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH
PETITIONER INTENDS TO RELY

In this proceeding, petitioner, the National Labor Relations Board, will urge and rely upon the following points:

1. The Board properly asserted jurisdiction over respondents.

2. The Board properly found that respondent E. F. Shuck Construction Co., Inc., violated Sections 8 (a) (1) and 8 (a) (3) of the Act by giving effect to an illegal union-security provision in its contract with respondent Hod Carriers, Building and Common Laborers Union, Local No. 242, AFL, and discharging employee Richard B. Kieburtz pursuant thereto.

3. The Board properly found that respondent Hod Carriers, Building and Common Laborers Union, Local No. 242, AFL, violated Sections 8 (b) (1) (A) and 8 (b) (2) of the Act by giving effect to this illegal union-security provision in the contract with respondent E. F. Shuck Construction Co., Inc., and thereby causing the Company to discharge employee Kieburtz in violation of Section 8 (a) (3) of the Act.

4. The Board properly found that respondents Associated General Contractors of America, Seattle Chapter, Inc., and the Seattle Construction Council violated Sections 8 (a) (1) and 8 (a) (3) of the Act in that Kieburtz' discharge stemmed from the

illegal union-security provision which they had negotiated with respondent Hod Carriers, Building and Common Laborers Union, Local No. 242, AFL.

5. The Board's order is valid and proper.

Dated at Washington, D. C., this 7th day of May, 1956.

/s/ MARCEL MALLET-PREVOST,
Assistant General Counsel, National
Labor Relations Board.

[Endorsed]: Filed May 10, 1956. Paul P. O'Brien,
Clerk.

[Title of U. S. Court of Appeals and Cause.]

STATEMENT OF POINTS TO BE RELIED
UPON BY ASSOCIATED GENERAL CON-
TRACTORS OF AMERICA, SEATTLE
CHAPTER, INC.

Respondent, Associated General Contractors of America, Seattle Chapter, Inc. and its affiliate, The Seattle Construction Council, will rely upon the following points in connection with the petition for review:

I.

This respondent is not subject to the jurisdiction of the National Labor Relations Board and is not, and at no time material hereto, was it an employer engaged in inter-state commerce within the meaning of the National Labor Relations Act.

II.

The procedure was not commenced within the time limited by law, particularly Section 10d of the National Labor Relations Act.

III.

It was not shown that the alleged unfair labor practice affected commerce.

IV.

It was not established that this respondent engaged in any unfair labor practice.

V.

The findings of the National Labor Relations Board do not support the order entered against this respondent.

LYCETTE, DIAMOND &
SYLVESTER,

/s/ By LYLE L. IVERSEN,

Attorneys for Associated General Contractors of
America, Seattle Chapter, Inc., and The Seat-
tle Construction Council.

Certificate of Service Attached.

[Endorsed]: Filed May 25, 1956. Paul P. O'Brien,
Clerk.

Before the National Labor Relations Board
Nineteenth Region

19-CA-851

In the Matter of: E. F. Shuck Construction Co., Inc., and The Associated General Contractors of America, Seattle Chapter, Inc., and The Seattle Construction Council, and Richard B. Kieburtz, an Individual.

19-CB-261

Hod Carriers', Building and Common Laborers' Union, Local No. 242, AFL, and Richard B. Kieburtz, an Individual.

TRANSCRIPT OF PROCEEDINGS

Room 407-G, U. S. Courthouse, Fifth and Madison Streets, Seattle, Washington, Thursday, October 29, 1953.

Pursuant to notice, the above-entitled matter came on for hearing at 10 o'clock, a.m.

Before: Wallace E. Royster, Esq., Trial Examiner.

Appearances: Melton R. Boyd, Esq., Nineteenth Region, National Labor [1*] Relations Board, 407 U. S. Courthouse, Seattle, Washington, appearing as counsel for the General Counsel.

Carl E. Croson, Esq., and Arthur G. Quigley, Esq., 900 Insurance Building, Seattle, Washington, appearing on behalf of E. F. Shuck Construction Company, Inc., Respondent Employer.

* Page numbering appearing at top of page of original certified Reporter's Transcript.

Lyle L. Iversen, Esq., Lycette, Diamond & Sylvester, 800 Hoge Building, Seattle, Washington, appearing for and on behalf of The Associated General Contractors of America, Seattle Chapter, Inc., and The Seattle Construction Council.

Roy E. Jackson, Esq., 1207 American Building, Seattle, Washington, appearing on behalf of Hod Carriers', Building and Common Laborers' Union, Local No. 242, AFL, Respondent Union. [2]

Proceedings

Trial Examiner Royster: The hearing will be in order.

This is a formal hearing before the National Labor Relations Board in the matter of E. F. Shuck Construction Company, The Associated General Contractors of America, Seattle Chapter, Inc., and the Seattle Construction Council.

As I read that, those are all the Respondents, is that correct?

Mr. Boyd: That is correct.

Mr. Iversen: That is correct. However, those two are actually the same thing, the Seattle Construction Council is merely a designation of a portion of the activities of the Seattle Chapter of A. G. C.

Trial Examiner Royster: Well, those three are Respondents, or two, perhaps, more accurately, are Respondents in Case No. 19-CA-851.

A further respondent is Hod Carriers', Building and Common Laborers' Union, Local No. 242, AFL,

in Case No. 19-CB-261, the cases obviously having been consolidated. [4]

* * * * *

Mr. Boyd: Before presenting the witness, I would at this time offer in evidence the General Counsel's Exhibit No. 1, which contains the formal papers, all of which have been served upon the parties in this case.

Mr. Iversen: No objection.

Mr. Jackson: No objection.

Mr. Croson: No objections.

Trial Examiner Royster: Received. [7]

* * * * *

Mr. Boyd: Mr. Harper is called under Rule 43 (b).

COLTON D. HARPER

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Boyd): Your name is what, please?

A. Colton D. Harper.

Q. What is your employment, Mr. Harper?

A. I work for the Associated General Contractors of America, Seattle Chapter, as assistant manager.

Mr. Boyd: Off the record, if I may.

Probably better on the record.

I will inform the Trial Examiner that the Seattle Chapter of the A. G. C., whom we will refer to as "the A. G. C.", although we are referring to the

(Testimony of Colton D. Harper.)

Seattle Chapter, and to a constituent portion of it known as the Seattle Construction Council, I have requested them to produce for this hearing conformed copies of labor agreement dated November 3, 1950. Compliant with that request, they are produced here today, and I would have these documents now marked General Counsel's Exhibit No. 2. [8]

* * * * *

Trial Examiner Royster: Without objection, General Counsel's Exhibit No. 2 is received. [9]

[See pages 205-209.]

* * * * *

Q. (By Mr. Boyd): Mr. Harper, named in that agreement, as the agency by and through which the Seattle Chapter executed this agreement, is the Seattle Construction Council. Is it not true that the Seattle Construction Council, as indicated by your counsel here today, is a part of, or a segment of, the membership of the Seattle Chapter and controlled by Article 24 and Section 4 thereof, of the by-laws of the Seattle Chapter of A. G. C.?

A. Yes. That is true.

Q. In regard to this contract in evidence, Exhibit 2 of the General Counsel, is it presently in effect?

A. This particular agreement?

Q. Yes. A. Yes, it is.

Q. Is there at this time indication that it will be continued in effect, so far as the parties to the contract are disposed?

A. The indications are at this time that that agreement will expire this year.

(Testimony of Colton D. Harper.)

Q. When? A. The end of this year.

Q. At the end of this year. And by what act is it to expire at the end of this year?

A. Most of the signatures that are on that agreement, as it is now written, abrogated the agreement and have written separate contracts with other trade associations who employ the [10] majority of their members. At the present time we have only the Laborers' 242, and the resilient floor layers, the cement finishers and the iron workers on that agreement. That is four local Unions. And of those four, they have all indicated a desire to abrogate it, or they have abrogated it, with the exception of the resilient floor layers. And we expect that momentarily.

Q. Now, as between the Seattle Chapter of A. G. C. and Laborers' Union 242, the effective date of its termination will be when, according to the notifications that have passed between you?

A. December 31, this year.

Q. With regard to other Unions signature to this contract, you say that except for four, they have entered into other separate contracts or into another single contract?

A. I don't get the difference.

Q. Well, have they jointly signed the same——

A. (Interrupting): Oh, no.

Q. (Continuing): ——another document, or has the A. G. C., Seattle Chapter, entered into a series of different agreements, and separate agreements, with the other Unions?

A. That is correct. Separate agreements.

Q. Have those agreements now been executed?

(Testimony of Colton D. Harper.)

A. Some of them have and some of them will be executed the first of the coming year. [11]

Q. Is there in the language of any of these other agreements this language of Section 9 of the existing agreement?

A. Not as it is there written. There is a hiring clause in these other agreements, but not worded as it is here.

Q. It is not in the language that appears here?

A. No.

Q. The A. G. C. has been the bargaining representative in behalf of the employers with the various building trade Unions in the Seattle area for what period of time?

A. Since, roughly, 1923. * * * * * [12]

Q. (By Mr. Boyd): Your Chapter in practice, does it not, receives plans and specifications for proposed construction in the Pacific northwest and in Alaska?

A. That is correct.

Q. That is a regular service that the Chapter offers?

A. Yes.

Q. By virtue of that service which you are offering, do you have opportunity to know what of these contracts are let, construction contracts are let, to your own membership?

A. Anything that I might tell you would be a pure guess. We have no, we have never run a tabulation on it or anything to determine the percentage.

Q. Well, I do not want to guess in this record, but do you not in regular practice circularize your

(Testimony of Colton D. Harper.)

own membership to inform them to whom the contracts have been let? A. Oh, yes.

Q. And that would include not only bidders who were not members of your organization, but bidders who were members of your organization?

A. Correct.

Q. I appreciate that you cannot recall all of these contracts that have been let in the last year, but do you have sufficient knowledge so that you can give an informed opinion, state an informed opinion, that among your members, and exclusive of the Respondent, Shuck Company, there has been let to them contracts [13] totaling, in contract price, more than fifty thousand, for work that was to be done on shipping terminals along the coast of Washington, and particularly in Seattle, shipping wharves, and steamship company facilities?

A. On every one except the steamship company facilities I can say yes.

Q. That is, there has been more than fifty thousand worth of work done for shipping terminals, that are used in loading of ocean-going vessels?

A. Correct.

Q. And wharves? A. Correct.

Q. In addition to that, and apart from that, do you know whether members of your organization, apart from the Shuck Company, have performed work for the port of Seattle? A. Yes.

Q. And do you know that members of your organization, apart from the Shuck Company, in the past year would have performed work in excess of

(Testimony of Colton D. Harper.)

fifty thousand for the port of Seattle? A. Yes.

Q. Now, apart from that, is it true, is it not true that members of your organization, apart from the Shuck Company, have performed work under construction contracts where the contract price was, in total, exceeded fifty thousand, for employers or for companies, for owners, property owners, who were engaged in [14] producing goods that are shipped in interstate commerce? Libby, McNeill & Libby, for example, or any number of the great manufacturers in the northwest.

A. I would say yes.

Q. And the amount of goods which those companies ship in commerce, it would be your informed opinion that that exceeds more than twenty five thousand a year? A. Yes.

Q. With regard to the port of Seattle, in the matter of your own knowledge, it is the public corporation that operates the free port at Seattle, and in addition to that, the International Airport at Seattle-Tacoma International Airport, is that not correct? A. Yes.

Q. In addition to operating the International Airport and the free port of Seattle, is it a matter of knowledge to you that it operates, that it owns and leases facilities, or terminals, for the trans-shipment of goods, and in addition to that, for the storage of goods awaiting shipment? A. Correct.

Mr. Boyd: I have no further questions of Mr. Harper.

(Testimony of Colton D. Harper.)

Cross Examination

Q. (By Mr. Iversen): Mr. Harper, was there a previous contract with these same labor organizations negotiated by the A. G. C.?

A. Excuse me. I don't know the exact date all the way back, [15] but the most recent one, and the furtherest one back that we have of copy of, is dated, I think, in October of 1940.

Q. Do you recall whether or not that had a clause in it similar to Section 9 of the present contract?

A. It's almost identical.

* * * * *

Mr. Iversen: I propose to offer a contract dated August 13, 1940 containing a Paragraph 9, which reads as follows: "A. It is further agreed that all members of the party of the first part hiring employees will employ none other than members of the party of the second part, as enumerated in schedule attached hereto, entitled 'Wage Scale'".

* * * * *

Mr. Iversen: "B. The party of the second part agrees that it will require all employers, whether parties of the first part or not, to meet the conditions of Section 7, 8 and 9 of this agreement, and further to register and comply with the state workers Compensation Tax Act, the State Business and Occupation Tax Act, the State and Federal Social Security Acts, and the [16] State Unemployment Tax Act, before the party of the second part will furnish men to such employer. It shall be the responsibility of the party of the second part, to the best

(Testimony of Colton D. Harper.)

of its ability, to enforce a Union condition on all the construction within the jurisdiction of said part"——

Mr. Boyd: (Interrupting) Party.

Mr. Iversen: It reads "part" here. The "y" must have been dropped.

(Continuing) ——"as defined in Paragraph 3." [17]

* * * * *

Mr. Iversen: My proposal was to offer this for the stipulation, in lieu of the introduction in evidence of the document.

Mr. Boyd: I will concur in a stipulation that the matters read into the record shall be received in evidence, evidencing [19] the agreement that had been entered into, effective October 10 of 1940.

Trial Examiner Royster: Is that agreeable?

(No response.)

Trial Examiner Royster: The stipulation is noted.

Q. (By Mr. Iversen): Mr. Harper, was that agreement entered into in October 1940 continuously in effect from that time until the amendment that has been introduced into evidence, introduced in 1950?

A. It was in continuous effect, with the exception of some minor addenda that have been added to it relative to wage increases and minor pay items. [20]

* * * * *

Q. Did the Seattle Council act as your negotiating agent on behalf of the industry?

(Testimony of Colton D. Harper.)

A. The Seattle Construction Council?

Q. Yes. A. Yes.

* * * * *

Q. (By Mr. Iversen): What is the relationship between the Seattle Council, the Seattle Construction Council, and its member organizations, with respect to these, to the negotiation of these agreements? Just what authority does it have?

A. Do you mean now, the relationship between the Seattle Construction Council and the A. G. C.?

Q. No. The relationship between the Seattle Construction Council, as a negotiating agency, and its members. Just what authority does the Seattle Construction Council have?

A. The Seattle Construction Council negotiates these agreements for and on behalf of its membership, and also the Seattle Chapter of the A. G. C.

Q. And are they bound, are the members bound, by the agreements as negotiated? [21]

A. Yes, they are.

* * * * *

Mr. Boyd: Mr. Buchanan is called under Rule 43 (b).

ROBERT BUCHANAN

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination [22]

Q. (By Mr. Boyd): Your name, sir?

A. Robert Buchanan.

(Testimony of Robert Buchanan.)

Q. And your employment?

A. I am the Secretary of the Building Laborers' Union, Local 242.

Q. Do you also serve as the business agent of the Local?

A. That is correct.

Q. Were you serving as the business agent of the Local during July of 1953?

A. Yes.

Q. Were there other business agents of the Local?

A. One assistant, yes. Mr. Wood.

Q. You say Mr. Wood. Russell Wood?

A. That is correct.

Q. His full name is Elmer Russell Wood?

A. That is correct.

Q. But he is commonly known as "Red"?

A. That is right.

Q. Where were your offices at that time, Mr. Buchanan?

A. 2800 First Avenue, in the Labor Terminal.

Q. Did you have working in that office another officer of the Local?

A. Yes. Mr. Shannon. Hubert Shannon.

Q. What was his position?

A. He was the corresponding secretary and labor dispatcher. [23] Was that in July?

Q. In July.

A. No. Mr. Shannon resigned on the 29th of June.

Q. Mr. Allman?

A. Mr. Allman, that is correct. Mr. Shannon resigned on the last day of June.

(Testimony of Robert Buchanan.)

Q. Mr. Allman's first name is what?

A. Leo.

Q. And he was the corresponding secretary and served as the dispatcher? A. That is correct.

Q. You shared the same office space, did you not?

A. We have only one office, yes.

Q. The office is so arranged that you have a counter, behind which Mr. Shannon served as the dispatcher? A. That is right.

Q. Your desk was located behind the counter?

A. Yes.

Q. Your Union, Local 242, is signatory to this contract in evidence, General Counsel's Exhibit No. 2? A. That is correct.

Q. You are familiar with the hiring practices that are followed under the contract, are you not?

A. Yes.

Q. With regard to those hiring practices under the contract, [24] what has been the practice of Shuck Construction Company in the matter of securing common laborers or hod carriers, building laborers, members of your union?

A. They make a call for men when they are required, as a matter of practice, when they need men they call for them.

Q. What is your practice in the matter of dispatching men, when you are called for men?

A. Let me get this straight. You mean the method they are sent out on?

Q. Yes. What method do you follow in determining who should be sent out?

(Testimony of Robert Buchanan.)

A. When the members get out of work they register, and we try and send the man out first who is registered the longest.

Q. The first man in is the first man out, is that your practice? The first man registered is the first man to be dispatched, normally?

A. We separate the men between laborers, hod carriers and brick men. They are segregated. Providing they are qualified.

Q. What men register there, then? Who registers at your office?

A. The members of the organization.

Q. The members of your organization?

A. That is correct.

Q. Do you carry a register for non-members of your organization? [25]

A. Well, if some non-member goes out, we keep a record of him. But we don't keep a full record, unless he goes to work, but if we send a non-member to work, we just keep a record of where he goes to work. Maybe a hundred a day come in there.

Q. Under what circumstance, in practice, do you send a non-member out to a job?

A. On a temporary permit for a week or ten days, to see if he qualifies, if he likes the job, temporarily.

Q. Do I understand that it is your practice, where a non-member comes in, you let him register, or is it that you just put down his name on a slip of paper?

A. No. It depends on the employment situation.

(Testimony of Robert Buchanan.)

If the employment situation is good, we have many come down in the morning and we generally try to send him along with some of the other members out to work.

Q. If the employment situation is not good, is there any preference given between the members and non-members?

A. Oh, preference to the members, yes.

Q. You would dispatch only the members first, so long as there are jobs to be filled, you would dispatch your members?

A. First, and then afterwards the non-members or people who have traveled in here, who don't belong to the organization.

Q. Do you carry non-members' names for a specific period of time in your office?

A. Yes. We have these dispatch slips. We carry them for [26] about a year.

Q. Having made out a dispatch slip, and having dispatched a non-member, you keep a copy of that?

A. Yes.

Q. But, insofar as keeping any register of those members, do you keep any register of non-members for any period of time?

A. No, we don't.

Q. So, as I understand the substance of your testimony, if a non-member comes in, and if he is looking for a job, you would put down his name, and in the event that you had no member to dispatch to that job, would you then dispatch the non-member?

A. That is correct. Whatever number they might be.

(Testimony of Robert Buchanan.)

Q. You make out a dispatch slip for him and keep your copy of that dispatch slip?

A. We keep a duplicate, yes.

Q. Now, with respect to dispatching people to Shuck Construction Company, is this the procedure that you have followed? A. That is correct.

Q. You referred to dispatching non-members on a permit.

A. A temporary slip, a temporary permit slip, yes.

Q. Is that something apart from the dispatching slip? A. Yes.

Q. You give him a permit, then?

A. That is right.

Q. What is the fee that is charged for a permit? [27]

A. Nothing for the first ten days. To see if the people really can qualify, we give them a ten-day period to find out.

Q. That is, the permit recognizes, that is an acknowledgment that he has passed through your hall and permits him to continue working there for a period of ten days? A. Yes.

Q. At the end of ten days, what is required then?

A. He must then apply for membership.

Q. What is the membership fee, or the initiation fee? A. \$27.00.

Q. And is there a monthly membership fee apart from that? A. \$1.50 dues, yes.

Q. Dollar and a half dues? A. Yes.

(Testimony of Robert Buchanan.)

Q. So such a person, who had been employed for ten days, would then be required to come in and pay up his initiation fee of \$27.00?

A. Oh, no. He gets 30 days to pay that in.

Q. He has 30 days in which to pay that?

A. Yes.

Q. But you require him to make his application, though, at the end of ten days?

A. That is correct. [28]

* * * * *

Q. Did you have any occasion to talk to Richard Kieburztz, this young man seated on my left? (Indicating.)

A. I remember him being only once in there, I believe I remember him being in there once.

Q. Can you recall when he was in there?

A. It was during school vacation, when the students——

Q. (Interrupting) You have no recollection of the date? A. Not the exact date, no.

Q. But you do remember the occasion?

A. Yes, I remember it.

Q. Will you tell us as best you recall, what passed between you and—did you talk to him at that time?

A. I guess he talked to Mr. Allman, and then he finally talked to me, I think it was. He had been in there previously. He came into the office, I think. I am not certain on that.

Q. Did you say that he was in there once before the time when he talked with you?

(Testimony of Robert Buchanan.)

A. No. I believe it was the same particular day, but I wasn't in the office. I probably wasn't in there.

Q. Oh, I see. In other words, you were not present when he came in on any previous occasion? [29]

A. No, I was not. That is right.

Q. But you understood that he had been in on a previous occasion? A. No.

Q. Then I misunderstood your testimony.

A. No. I might have been in the building, but I wasn't in the office when he came in on that particular day. But I think it all occurred on the same particular day, to my knowledge, any interview we had with Mr. Kieburtz——

Q. (Interrupting) It all took place on the same day, so far as you know?

A. As far as I am concerned, that is correct.

Q. Did you ever hear any conversation passing between Mr. Kieburtz and Mr. Allman, the dispatcher? A. No, I did not.

Q. Did you personally talk with Mr. Kieburtz?

A. Yes.

Q. Will you relate to us, please, what you recall of your conversation with Mr. Kieburtz?

A. Well, he said that he wanted to get a permit to go to work, and I asked him who he was going to work for.

Q. And what would be the significance of that?

A. Well, we keep a record of people going to work, for whom they go to work, yeah.

Q. And then what? [30]

(Testimony of Robert Buchanan.)

A. I believe he told me it was none of my business.

Q. You mean, he used that expression?

A. Well, in effect, yes.

Q. What did you say?

A. I said to him, "You had better have the contractor who you are going to work for call us up, and then we will know where you are going to work."

Q. Why would you tell him that under those circumstances?

A. We like to keep track of where people go, and if the contractors call up for some certain individual, like especially during the school vacation, some students, we try and clear these students, someone to the contractor's liking, under the fact that the students aren't always very well qualified as laborers.

Q. Having made that remark to him, that he should have the contractor call you up and tell you that he was going to hire him, what response did he make to that?

A. He said he didn't have to.

Q. Then what did you say in response to that?

A. I didn't say anything. I didn't say anything much to him. [31]

* * * * *

Q. Did you not explain to Mr. Kieburtz that, when you said to him that the contractor should call you, did you not explain to him that the labor contract required the contractors to call you?

A. No, I didn't explain that. [32]

Q. Well, it's true, is it not, that the collective

(Testimony of Robert Buchanan.)

bargaining agreement does require the contractors to call you, for the dispatch of men?

A. Yes, but they don't all do it.

Q. But you have endeavored to require them to do it, have you not?

A. Yes, that is correct.

Q. To live up to their contract, which is understandable?

A. Yes. They do call us and say put someone to work, and if they can qualify they can become members of the organization. The contractors would like us to take them in as members of the organization.

Q. Did you issue a permit to Mr. Kieburtz?

A. Not that I know of, no. I am not positive on that. I didn't personally, no, I didn't.

Q. And that was what he came in to ask for?

A. Yes.

Mr. Boyd: That is all. Thank you, Mr. Buchanan.

Cross Examination

Q. (By Mr. Jackson): Mr. Buchanan, how long has the Shuck Construction Company been drawing men or getting men through the Union?

A. Oh, since, ever since they started to open business. It must be, oh, ten or fifteen year ago since Mr. Shuck went in business for himself. [33]

Q. What has been the relationship between the Union and the Shuck Construction Company with reference to hiring young men that are out of school during vacation periods, in past years?

A. Oh, there has been quite a few favors

(Testimony of Robert Buchanan.)

granted to Mr. Shuck, along with the rest of the contractors.

Q. Is that a practice that has been followed by the Union, to give permits to the boys coming out of school at the vacation periods, so they can go to work on jobs? A. That is correct.

Q. On jobs?

A. They don't have to become members of the organization. They have what we call a school permit, which costs them \$5.00, and that does them for the vacation period.

Q. Would you explain that? What is the difference between the school permit and the temporary permit?

A. The temporary permit is issued to someone who is eventually going to join the organization or just continue working, but this is for, the school permit is for, the boys who are going to work for the duration of the summer. And they have the privilege to join if they wish to.

Q. In 1953, during the period when Mr. Kiebertz here came down to see you, how many permits were given to boys coming out of the school, to go to work during this past summer?

A. Well, there were quite a, there were quite a number. I couldn't say exactly. But much less [34] than there had been in years previous, under the fact that the work situation had changed differently this summer, but to give you an accurate account, there were probably anywhere from 15 to 25 students working this summer.

(Testimony of Robert Buchanan.)

Q. And they were all working on the school permit? A. That is correct.

Q. School permit?

A. What they call student's permits.

Q. Student permit? A. Yes.

Q. In those cases, do those boys, do they generally have a job, do they tell you that they have got a job with some contractor and for you to give them a permit?

A. They mostly go to the contractor first, yes.

Q. And the contractor calls in and says he would like to put a boy to work? A. Yes.

Q. And then you arrange a permit for him?

A. We tell him to work him for ten days and see how he turns out, in case that he just don't fill the bill.

Q. And if he fills the bill satisfactorily to the employer, he just continues on, then, for the vacation season? A. That is correct.

Q. Generally what period is that from?

A. Well, it would be from July up until September, and then [35] the University boys continue on until the middle of October, I guess it is, or the first week in October. [36]

* * * * *

Q. Mr. Buchanan, you were here this morning when the stipulation was made with reference to the contract that was negotiated between the Associated General Contractors and the Building Trades Council, which has been referred to as dated

(Testimony of Robert Buchanan.)

August 13, 1940. At that time were you the secretary and business agent of Local 242?

A. That is correct.

Q. And did your organization participate [38] in that, in the negotiations and signing of the contract dated August 13, 1940?

A. Yes. It was under a different regulation at that particular time. It was a building trades contract, with all trades in the one agreement. Everybody, all the various trades was in. That was negotiated by a committee of five, elected by the Building Trades Council to negotiate the agreements.

Q. And your organization was a signatory to that contract?

A. Yes, I was one of the negotiators on there.

Q. You were——

A. (Interrupting) I participated for the building trades. I was on there.

Q. That is, you were one of the members representing the labor groups in negotiating that contract? A. That is correct.

Q. And your Union, Local 242, was a signatory to that contract? A. That is correct.

Q. August 13, 1940? A. Yes.

Q. Prior to 1940 did your Union and the other trade Unions, that is, building trade unions, have contracts with the Associated General Contractors?

A. Yes, sir. The first contract, I believe, was 1925.

Q. And this clause that is referred to, and was read into the record this morning, from the con-

(Testimony of Robert Buchanan.)

tract of August 13, 1940, with reference to the employers drawing men through the Union, [39] has that clause always been in the contract?

A. Yes. Words to that effect, yes. Probably not the exact wording, but it meant the same.

Q. In other words, since 1925 the employers have drawn their labor through the Unions?

A. That is correct.

Q. And that has been a practice that has been followed since 1925, to your knowledge?

A. That is right. That is correct. [40]

* * * * *

Redirect Examination * * * * *

Q. (By Mr. Boyd): With the student permit, is that effective for only ten days?

A. No. That is, he has to make up his mind in ten days, the contractor, whether he is going to continue his employment.

Q. But at the end of ten days, the student, he then pays the \$5.00? A. That is correct.

Q. With reference to the non-student, you give a man who is not a member, then, a permit under some situations?

A. Almost the same situation.

Q. Is that effective for only ten days?

A. Yes, and then he comes in and starts paying on his——

Q. (Interrupting) The \$27.00 membership fee?

A. No, starts putting the money down on it. They generally get a months' time. [49]

Q. He puts something down right then?

(Testimony of Robert Buchanan.)

A. Yes. And then—it's generally 40 days' time we give them.

Q. Do I understand from your answer, then, that you would not be dispatching any man, a student or a mature man, you would not be dispatching him unless he had a permit, a ten day student permit or a working permit?

A. We would have a slip that he had cleared through the office, in order to satisfy the other man.

Q. That is the function of the dispatching slip?

A. Yes.

Q. What is the function of the slip?

A. In case there is a single handed job, in case some of the other trades ask him if he was cleared through the organization, probably, on residence work, there would probably be only one man on residence work, and probably some plumber or brick layer would ask him——

Q. (Interrupting) And that would show them that he had been cleared by, and was acceptable to that extent, by your Local 242?

A. That is correct.

Q. And it would also show the function, of showing the business agent, who might visit the job, that he had cleared through the hiring hall?

A. That he had visited the office, that is correct.

Q. There have been instances, have there [50] not, when contractors have called you personally as the business agent of the Union, saying that they had a man who was wanting to go to work,

(Testimony of Robert Buchanan.)

could they put him to work, and you have told them that they would have to be sent down to the Union hall before being put to work?

A. Send him down to get his clearance, yes. We send him down to get a dispatch slip, yes. [51]

* * * * *

Mr. Boyd: Mr. E. F. Shuck, called under Rule 43 (b).

* * * * *

EUGENE F. SHUCK, JR.

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Boyd): Your name, please?

A. Eugene F. Shuck, Jr.

Q. What is your employment, Mr. Shuck?

A. Well, general contractor.

Q. Well, you are connected with what company?

A. With the E. F. Shuck Construction Company. I am vice-president and secretary of the corporation.

Q. What part do you have in the practical operations of the corporation?

A. Oh, office and field supervision, as well as the handling of estimates and contracting.

Q. With reference to your organization, your field organization, do you have a general superintendent? A. Yes, we do.

Q. And his name is what?

(Testimony of Eugene F. Shuck, Jr.)

A. Louis Benson.

Q. Did you have in July a job superintendent on the Mercer Island school? A. Yes.

Q. And his name was what?

A. Everett Sayler.

Q. In addition to him, did you have a labor foreman employed on that job in the latter part of July? A. Yes, sir.

Q. And his name was what? [53]

A. Chester Tucker.

Q. How long, incidentally, had Mr. Tucker been in your employ at the end of July? Or we will put it in this way: When did he start in your employ, to the best of your recollection?

A. Let's see. I would say that would be about the first of June. I don't remember the exact date. He came to work over there shortly after the job started.

Q. That was the first instance of him working for you? A. Yes, sir.

Q. Can you fix it in relation to the time when Richard Kieburztz worked on the job, when it was that Tucker was employed on the job?

A. Well, he was there during his——

Q. (Interrupting) While Tucker was employed?

A. Yes.

Q. How long before Kieburztz' employment was it that Tucker had first been employed? I am trying to relate it to an event, if you can't recall the date.

A. Well, the latter part of June and first of July, and Tucker was there as of the first of June.

(Testimony of Eugene F. Shuck, Jr.)

Q. I believe our record will establish that Kie-burtz was there on the last three days in July, so is it your recollection that Tucker came there, now, the first of July?

A. No. He was there before the first of July.

Q. You think he was there before the first of July. Very well. [54] Incidentally, have you ever had any conversation with Mr. Kieburtz?

A. He was in, yes, he was in the office.

Q. Do you recall when that occurred?

(No response.)

Q. Was it before or after his employment?

A. He was in before his employment. He came in and asked for Mr. Benson.

Q. Yes?

A. At which time, as I recall, Lou was not in. And we try to funnel all of our men through Mr. Benson.

Q. Did you talk with Kieburtz on that occasion?

A. That was the substance of our conversation at that time.

* * * * *

Q. Let's go to matters that are alleged as your operations affecting commerce.

Mr. Boyd: Not to the legal conclusion as [55] such, Mr. Croson, but you may wish to make a statement concerning your denial of Paragraph VI and then such further statement as you desire to make, concerning the allegations admitted, or rather denied, in Paragraph IV.

Mr. Croson: Very well. I admit the allegations

(Testimony of Eugene F. Shuck, Jr.)

as set forth in Paragraph IV, the factual matter, and we deny the Paragraph VI, which, I think, is a conclusion of law. We reserve the legal question, in other words.

Trial Examiner Royster: So you want your answer to be considered as amended in accordance with that statement?

Mr. Croson: Yes.

Trial Examiner Royster: Very well. There is no objection to the amendment, I take it.

Mr. Boyd: Certainly not. And in order that it may be specific, because I see that Paragraph IV could be construed two ways.

Would you not, in fact, admit, Mr. Croson, that the respondent employer, Shuck, did construction work valued in excess of fifty thousand for the port of Seattle in 1952, and apart from that did other construction work valued in excess of fifty thousand for employers who themselves produced goods valued in excess of twenty five thousand that were delivered outside of the state of Washington, all done in 1952?

Mr. Croson: We so stipulate.

Trial Examiner Royster: Very well. [56]

Q. (By Mr. Boyd): Mr. Shuck, does your company have any agreement with the Common Laborers' Union other than the document that is in evidence as General Counsel's Exhibit No. 2?

A. I know of none, no.

Q. That is the only agreement that has con-

(Testimony of Eugene F. Shuck, Jr.)

trolled your dealings with the Common Laborers' Union, Local 242? A. That is correct.

Q. Is that correct? A. That is right, sir.

Q. And it was, it was in effect, and your company recognized it as being in effect as of July 1953, July of this year? A. Yes. [57]

* * * * *

Q. When did Sayler inform you that Kieburtz was not a satisfactory worker?

A. That would be, as I recall, after he was let go.

Q. After he was let go? A. Yes.

Q. It was not discussed with you before he was let go? [61]

A. No. I don't follow up on those. I leave those up to the superintendent on the job. He is responsible for his men out there.

Q. As a matter of fact, Mr. Shuck, at the time when Kieburtz came in and told you that he had made his, filed his charge with the Labor Board, you then didn't know that he had been discharged, did you?

A. Yes, I knew that he had been discharged.

Q. When did you learn it?

A. Well, let's see. That would be on the Friday night that he was let go.

Q. Who reported it to you? A. No one.

Q. How did you happen to know that he was discharged that night?

A. Well, due to the fact that the way the checks were paid up when they were sent out.

(Testimony of Eugene F. Shuck, Jr.)

Q. Did you make up the checks?

A. Not the one that terminated his employment.

Q. How did you learn—how did you learn that his employment had been terminated?

A. We hire and fire all the time, depending on the need. I don't pay any attention to these men—

Q. (Interrupting) I am asking you what you know of Kieburtz' discharge. [62]

A. As I say, on a Friday night, our week ends on a Wednesday, we pay on a Friday.

Q. Yes?

A. And any time a man gets two checks on Friday, I know that for some reason or other he was let go.

Q. How did you know that he got two checks on Friday?

A. Through the bookkeeper. The bookkeeper makes the checks out.

Q. That is as I understand it. But if the bookkeeper makes out the checks, how did you know that Kieburtz got two checks on Friday?

A. That is the only reason I would know.

Q. Do you mean that the bookkeeper told you—

A. (Interrupting) I see all checks before they go out.

Q. Did you see Kieburtz' checks before Friday night?

A. It would be Friday night or Friday morning.

Q. Did you see Kieburtz' checks when they were made up?

(Testimony of Eugene F. Shuck, Jr.)

A. His check, the second check, I would say that, should say, in making it up, yes. The actual check I would say no. His weekly check I signed. But this check that released him, my father signed because I was not in the office at the time those checks went out. [63]

* * * * *

Q. And was Everett Sayler your only informant for the reason of the discharge for Kieburztz?

A. Everett was the first one I talked to, as I recall. Everett was the first one. Because I was surprised when he walked in with that thought in mind. It was all new to me, and immediately I contacted Everett and wanted to know what the deal was.

Q. That is when you found out the circumstances of his discharge, is it not? A. Yes.

Q. Then, the occasion for discharging the man was not because you were through pouring the cement, but it was because you didn't want him on the job, according to your account.

* * * * *

A. As far as the concrete being poured, we pour batches of concrete off and on. Maybe we will pour one batch on Monday and another batch on Wednesday. But in this particular case, I guess it was on a Wednesday or Thursday that they poured this batch of concrete, and if the man can get in and produce, and you have got work for him, you like to hang on to them.

(Testimony of Eugene F. Shuck, Jr.)

Q. How long did it take to pour the batch of concrete? [66] A. I don't know.

Q. You do know that other batches of concrete were poured on the same job site after that batch?

A. Oh, yes.

Q. You were just beginning to pour your footings at the time this young man was employed there, isn't that true?

A. No. On this particular building, on the administration building.

Q. When you say this particular building, you had the contract to construct more than the administration building, did you not?

A. Well, the whole project.

Q. And the whole project encompassed how many buildings? A. Yes.

Q. And they were identified as what?

A. As your covered play shed, as your classrooms, and the administration building.

Q. So the footings for all three of these buildings were to be poured in the course of your construction work? A. Yes. [67]

* * * * *

Mr. Boyd: In view of the last witness' answers, I would call under the same rule, 43 (b), Everett Sayler, the job superintendent.

EVERETT SAYLER

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination [68]

Q. (By Mr. Boyd): You will state your name, please. A. Everett Sayler.

Q. And what is your employment, Mr. Sayler?

A. What?

Q. Your employment? By whom are you employed and in what capacity?

A. By the Shuck Construction Company, as superintendent.

Q. Are you a general superintendent or a job superintendent? A. I am a job superintendent.

Q. Were you so employed in July of 1953?

A. About that time, yes.

Q. Were you so employed on the Mercer Island school construction job? A. That is right.

Q. At the outset, Mr. Sayler, tell us the nature of that job, that is, how much of a construction job it was in terms of the number of buildings involved, the size of the area, and the stage of construction in the latter part of July.

A. Well, there's three buildings there and a complete sewage system, sewerage system, quite a large play shed, and I think there is ten acres in the tract. There is one class room, administration building, and an all purpose building, and then the boiler room.

(Testimony of Everett Sayler.)

Q. What was the stage of progress on the construction job in the latter part of July, and I am referring specifically to the [69] time when Kie-burtz was employed there?

A. We were pouring footings on the class room at that time.

Q. Had you yet poured the footings on the administration building? A. No.

Q. Or had you yet poured the footings on the play building? Was that it?

A. Yes. No, we hadn't.

Q. Was it a play building or a gymnasium?

A. Play court.

Q. That is a covered court? A. Yes.

Q. Would it have sides on it as well?

A. No.

Q. Were there footings for the play court?

A. Yes, there were.

Q. Was there separately a gymnasium?

A. Well, it's a multi-purpose building. It's not a gymnasium. It's a multi-purpose building.

Q. Well, the multi-purpose building that you are now referring to, is that the same, the play court?

A. No.

Q. That is a separate building? A. Yes.

Q. Is that separate from the administration building? [70]

A. Yes. They are the, the two are together, but it's a separate part. The two are in conjunction

(Testimony of Everett Sayler.)

with each other, that is, the ends come right together.

Q. In addition to that, then, there was a class room? A. Yes.

Q. Covering these structures, upon what building did you pour the first footings?

A. On the class room building.

Q. And that was the pouring that you were doing at about the end of July?

A. I don't remember the dates. I have the dates when it was poured, but I don't have them in my mind right now. That was the first one, and that was about the time.

Q. Over what period of time after that were you engaged in pouring the footings for these several buildings?

A. Well, some of them were delayed quite awhile. It would be hard to say. Our first purpose was to get the class room done.

Q. Now, you have general authority, do you, to hire and fire? A. That is right.

Q. And you exercised that authority?

A. I haven't yet.

Q. What?

A. I haven't had to. I don't make a practice of hiring, or, that is, firing. When I want to get a man that is insufficient to do his job off of the job, then we lay him off. [71]

Q. Do you recall the circumstances of Richard Kieburts seeking employment there? A. Yes.

(Testimony of Everett Sayler.)

Q. Will you relate to the trial examiner as best you can recall, when it was he first sought employment and what occurred?

A. Well, I can't remember the date when he came. He came on the job and begged me for a job. He said he was trying to go to school, and I can't remember, he had quite a story. He wanted to get a job. I felt sorry for the boy and I told him I didn't have work for him then, but I referred him to the office, that he might put in an application for work down there. Then, oh, it went along a week or so, and through a mistake we got the wrong telephone number and got Kieburztz' number instead of another man that we wanted on the job.

Q. Did that mistake have anything to do with your discharge of Kieburztz? A. No.

Q. You do not attribute his discharge, then, to any mistake of employment? A. No.

Q. What was that mistake?

A. Well, just the wrong phone number, was all.

Q. Had you hired this other man on any previous occasion? A. No.

Q. What was it, then, that decided you to hire him instead of [72] Kieburztz?

A. Well, the other boy made a better appearance on the job to me. He looked like a man who could carry out the kind of work that I had.

Q. But you said he hadn't been working for you before?

A. Well, after you hire men for 35 years, you can tell by the looks of a man pretty well.

(Testimony of Everett Sayler.)

Q. This man's name was Lewis you are referring to? A. Yes.

Q. Bob Lewis? A. Yes.

Q. He was a University student? A. Yes.

Q. And actually, in relation to the time when Kieburztz first applied, when was it that Lewis applied? A. About the same time.

Q. Before or after?

A. I can't recall which one was there first. I don't remember.

Q. What was the circumstance — well, when Lewis came on the job, Lewis gave you his telephone number, didn't he? A. Yes.

Q. He left it with you? A. Yes.

Q. You told Kieburztz—you didn't take Kieburztz' telephone number, did you? [73]

A. I couldn't say for sure whether I did or not. I don't believe I did.

Q. Instead, you told him to get in touch with Lou Benson, didn't you? A. Yes.

Q. Lou Benson was the general superintendent and personnel manager? A. That is right.

Q. And Lou Benson had his principal office at the main office of the company?

A. That is right.

Q. You were working at the job site at Mercer Island? A. That is right.

Q. The main offices of the company are in the city of Seattle, aren't they? A. That is right.

Q. When was it that you were aware of the

(Testimony of Everett Sayler.)

mistake that was made in the matter of hiring Kie-burtz? When did you become aware of it?

A. When he appeared on the job.

Q. Do you recall your conversation with Kie-burtz when he came there the first time, when he first sought employment?

A. Nothing, only what I have told you.

Q. Mr. Sayler, my last question was, do you recall the conversations you had with Kie-burtz, particularly when he first came [74] there?

A. Just that he wanted a job, and he gave me a story that he wanted to go to school, and he wanted to make some money for that purpose. And I don't believe there was very much more conversation, if any.

Q. Any reference or inquiry concerning whether or not he belonged to the Union?

A. I think I asked him if he belonged to the Union, yes.

Q. Do you recall his answer?

A. He said no, he didn't, but that wouldn't be any trouble, he could handle that himself.

Q. And you say you did suggest to him at that time that he contact Mr. Benson? A. Yes.

Q. Did you at that time indicate to him that there might be a job for him later? A. Yes.

Q. At that time had Lewis applied for a job, Bob Lewis? A. I can't recall for sure.

Q. You say that you cannot recall the date of this first conversation? A. No, not exactly.

Q. The calendar date? A. No.

(Testimony of Everett Sayler.)

Q. Are you able to recall it in relation to the first time, [75] when he did start to work?

A. Well, it was a week or ten days anyway.

Q. Before that? A. Yes.

Q. Can you tell us the date on which he started to work?

A. Not without my time book, no.

Q. Will you please refer to your time book, or if it will refresh your recollection, is it not true that he started to work on July 29 of 1953?

Mr. Boyd: Make available to him, please, the time record.

Mr. Croson: Here.

The Witness: Thank you.

A. Yes, that is right.

Q. (By Mr. Boyd): And that was a Wednesday, was it not? A. Yes.

Q. Wednesday was the customary last day of your work week, of your pay week? A. Yes.

Q. Of your pay week? A. Yes.

Q. When you paid, you paid on what day in the week? A. We paid on Friday.

Q. And you paid, then, through Wednesday's work? A. That is right.

Q. Do you recall the circumstance of Kiebertz' [76] appearing for work that day?

A. All I can recall is that he came to work that morning.

Q. All right. Now, my question is between the time of the first conversation that you have testi-

(Testimony of Everett Sayler.)

fied to, and the occasion of him coming to work on that morning, the morning of the 29th, had you had any intervening conversations with him?

A. No.

Q. Did you on the morning of the 29th have any conversation with him?

A. I took his Social Security number and his name and got all the information from him, where he lived, his address and Social Security, and things like that, and then turned him over to his foreman.

Q. And to whom did you turn him over?

A. Chester Tucker.

Q. Tucker was the labor foreman?

A. That is right. [77]

* * * * *

Q. Do you know to what work he was assigned by Tucker?

A. It's pretty hard to remember that far back, but I think he was on the pick and shovel, that work.

Q. Did you personally assign him to the pick and shovel work? A. No.

Q. Did you personally observe his pick and shovel work? A. Yes.

Q. On what work did you observe his pick and shovel work that morning?

A. He was working right along side of me as I was running the instrument, shooting grades.

* * * * *

(Testimony of Everett Sayler.)

Q. What was the work that he was doing at that time?

A. He was supposed to be cleaning forms, back filling around forms, and cleaning them out.

Q. Forms for what? [78]

A. Concrete footings.

* * * * *

Q. This form is a small form, approximately two feet square? A. That is right. [79]

Q. It's nothing more than four pieces of sheet-rock rigged around a square, with supports on the outside? A. Yes.

Q. And he had been assigned to do what?

A. To clean off the forms and level out the bottoms and to back fill around the outside of them.

Q. And that was done preparatory to the pour?

A. Yes.

Q. The pour for the center of the building, these columns in the center of the building?

A. Yes.

Q. Was there any pouring going on at that time? A. Yes.

Q. Where was the pouring being done?

A. It was on the outside of the wall footings.

Q. That is, they were pouring the wall footings of the same building? A. Yes.

Q. At the time that he was engaged in doing this work?

A. We were pouring these other footings just as fast as they could be ready to pour.

(Testimony of Everett Saylor.)

Q. That is, he was working right ahead of the pour? A. That is right.

Q. Were these column footings poured on this same day? A. That is right. [80]

Q. Immediately after he accomplished his work?

A. Yes.

Q. Did he work alone on this?

A. I think there was one or two other boys working at it, too.

Q. Did you personally observe the work of Kie-burtz? A. That is right.

Q. What, if anything, did you observe concerning his work?

A. Well, I told him once how to do it, and the next time I got a chance to look at him, he still hadn't done anything I told him to. I went back and got down in the form myself and showed him how I wanted it done and he still didn't do it, and the architect came and bawled me out because the work wasn't done.

Q. What was it that you told him to do? Will you tell us, now, what it was you told him to do?

A. Well, I told him to pick out the big roots and chips out, and then to take a board and level the bottom of the form and take out all loose materials and level the form and have it clean, so that the concrete could be poured on a sound, clean bottom.

Q. Was that the extent of your first instructions to him?

A. Yes. After I showed him how to do it, I

(Testimony of Everett Sayler.)

gave him a board and showed him how to do it, as well as instructing him how to do it.

Q. Having done that, did he do it the way you informed him?

A. He never done it the way I informed him. I had to get [81] another man to finish it.

Q. Who was it that you got?

A. I can't recall. When you are pouring that way, you are busy and you have got to rush that stuff.

Q. Did you take Kieburtz off that work when you got the other man?

A. No. I left him shoveling dirt around there.

Q. For what purpose?

A. On the back fill, on the same forms.

Q. When you speak of the back fill, you are now talking about piling dirt around the outside of the sheetrock form in order to give it support, to hold the concrete when it's poured in, is that not right?

A. That is right.

Q. But you do not recall the name of the other man who was assigned to work along with him?

A. No, I don't.

Q. Do you know what the other man had been doing immediately before you called him to do this work?

A. No, I don't.

Q. Do you know what work he was returned to after he did the work that you had assigned initially to Kieburtz?

A. Well, when they run out of work like that

(Testimony of Everett Sayler.)

they go back to their foreman. They don't come to me.

Q. What was the circumstance, then, that occasioned you to be [82] the one to assign Kieburtz to this work when you had originally put him in charge of his foreman, Tucker?

A. Well, I didn't assign him to the job, but I did try to show him how to do it.

Q. Do you know whether Tucker had shown him how to do it?

A. I don't know if he did or not. Mr. Tucker was awfully busy that morning. Everybody was busy. When you are pouring concrete, everybody on the job is supposed to be busy.

Q. It is your clear recollection that this occurred on the occasion when you were pouring the concrete? A. Yes.

Q. And this was on the morning when he was employed? A. Yes.

Q. All right. How long did his work in doing this continue, in clearing the column footings?

A. Well, that was all cleared up and poured, I think, by about noon or a little after. I don't recollect how long we were on that.

Q. All right, then, to what was Kieburtz then assigned? A. I think back on some trenches.

Q. I beg your pardon?

A. I think he was back digging trenches. I am not sure, but I think he was put on with the rest of the gang on digging trenches for more footings.

(Testimony of Everett Sayler.)

Q. Was back digging on trenches, is that what you said? [83] A. Yes.

Q. These trenches were for what purpose?

A. For footings.

Q. They were the wall footings, then, is that right? A. Yes.

Q. What was the nature of his work in relation to the wall footings?

A. Pick and shovel work.

Q. Doing what, specifically?

A. Well, to dig the trench, take the pick and shovel and dig a trench so deep.

Q. That is what he was assigned to do?

A. Yes.

Q. Did you observe his work in that respect?

A. I did once or twice, yes.

Q. How was he accomplishing that work?

A. Very slow.

Q. So far as the correctness of the work that he was doing, how was it?

A. Well, he never, he never quite completed anything I don't think.

Q. Mr. Sayler, how long have you been with this company? A. On this job.

Q. Just on this job? Yes. [84]

Q. Now, as a matter of fact, you know that those trenches were dug by mechanical means originally, were they not? A. No.

Q. They were not mechanically dug?

A. The roughing out was done mechanically.

(Testimony of Everett Sayler.)

Q. And then these men were put in there to do some finishing up operation? A. Yes.

Q. It was not simply, then, a matter of digging the trench originally, but it was a matter of shaping up the trench?

A. Yes, that is right, taking out loose material.

Q. Did Kieburtz alone do this type of work?

A. Every man on the job did this type of work.

Q. That is, all the common laborers or people other than common laborers?

A. All the common laborers.

Q. Do you remember how many common laborers you had on the job at that time?

A. I could look here and see.

Q. Three, was it not?

A. I believe that is right.

Q. I will give you the names, Swatack, Root and Kieburtz.

A. Yes. There was Leonard Root and Sam Swatack and Richard Kieburtz on July 31.

Q. I am directing your testimony and your attention to the day [85] of July 29, the first day that he went to work there. What were the names of the laborers, common laborers, employed on that date?

A. That was Leonard Root, Sam Swatack and Richard Kieburtz.

Q. Were there any others employed on that date? A. Not common laborers.

Q. Will you look at the next following day,

(Testimony of Everett Sayler.)

which is July 30, and tell me how many common laborers were employed on that date?

A. Thirtieth. This was on a Saturday, wasn't it?

Q. I am referring to Thursday, July 30.

A. It would be the same three.

Q. Sam Swatack?

A. And Richard Kieburtz and Leonard Root. That's all, plus their foreman.

* * * * *

Q. (By Mr. Boyd): Did Kieburtz' foreman, Tucker, make any [86] observations to you concerning Kieburtz' work?

A. We discussed his inability to hold his job, yes.

Q. Did that take place on Wednesday, the first day of his employment?

A. Every day he was there.

Q. Specifically, what did Tucker say to you?

A. Well, he said he didn't seem to think, he didn't think he was following instructions like he should. And I didn't think he followed instructions either.

Q. And Wednesday was the last day of the pay week.

A. Yes.

Q. Did Kieburtz work on the next day, Thursday?

A. Yes. [87]

* * * * *

Q. (By Mr. Boyd): The last question to you was, to what work was he assigned on Thursday?

A. He worked on hand excavation and back fill.

(Testimony of Everett Saylor.)

Q. You have an original record there that was made during the course of work at that time, that you are making reference to? A. Yes.

Q. And when it refers to "hand excavation", to what type of hand excavation is that?

A. Hand excavation and back fill, six hours.

Q. Your record here shows, that you have referred to, that he put in two hours on hand excavation, and a total of six hours on back fill, is that right? A. Yes.

Q. This is on the second day of employment?

A. Yes.

Q. What was this hand excavation work?

A. It was on footings. [88]

Q. Were these wall or column footings?

A. I think they were wall footings.

Q. Upon what was the back fill?

A. That I don't recall.

Q. Do you have a similar work sheet for the preceding day? A. That would be the 31st?

Q. No, for the preceding day.

A. Oh, that's a time sheet there. Hand excavation.

Q. For how many hours? A. Eight hours.

Q. No back fill shown? A. No.

Q. Did he on the first day of his employment engage in this work that you have described, of excavating for the column footings?

A. He had the two that he had to work together, and it was all charged to the same.

(Testimony of Everett Sayler.)

Q. But your record shows that on the first day he was engaged eight hours in hand excavation.

A. Hand excavation and back fill.

Q. That is not your record, is it? Your record shows eight hours of hand excavation.

A. On this type of work it's all charged to the same thing.

Q. Why is it that you separated it on the second day and showed two hours in hand excavation and six hours in back fill? [89]

A. Well, because it was a different type of work.

Q. What was the difference, then, between the back filling on the second day and the back filling on the first day?

A. The first day he had to take out and put back in at the same time, it had to be all done in one operation in order to hold the forms together. On the other, the forms were wood and were all in, and were charged strictly to what they were.

Q. That is, what you are saying is that on the first day he had to take the dirt out and put it back in the same operation? A. Yes.

Q. And you call that hand excavation?

A. Yes.

Q. And on the second day he was just throwing dirt back in without taking any out, and you call that back fill, and that is a different operation?

A. Yes.

Q. What was he doing on the third day? What does your record show that he was doing on the

(Testimony of Everett Sayler.)

third day? This has reference to Friday, July 31.

A. Hand excavation.

Q. For how many hours? A. Eight hours.

Q. Did you observe his work at all on Friday when he was engaged in that hand excavation?

A. Yes, I did. [90]

* * * * *

Q. (By Mr. Boyd): What did you observe on the manner in which he was doing his work on Friday, July 31?

* * * * *

A. He went at it very slow and he moved around a good deal like a snail, I would say, and he didn't seem to have any ambition to get anything done. And he was way behind the other men on the same type of work.

Q. (By Mr. Boyd): Who were these men that he was way behind? A. Every man on the job.

Q. What men on the job? Name them specifically.

A. Swatack for one, Leonard Root for another.

Q. Were both of them doing identically the same type of work that he was doing?

A. Yes.

Q. You have a clear recollection of *the* personally?

A. They were all doing the same type of work.

Q. When you say all, you mean all three of them? [92] A. Yes.

Q. You are now saying in different words, that

(Testimony of Everett Sayler.)

he was slow. Is there anything else that you observed about his work?

* * * * *

A. Well, that is about all.

Q. (By Mr. Boyd): This was the same thing that you observed on the first day? A. Yes.

Q. Why didn't you discharge him on the first day?

A. Well, I like to give a man a chance. Maybe he could come out of it on the second day, after the first day. The first day on the job he has got to get used to instruction and supervision, and the first day you can't judge a man, really.

Q. Did you on that day decide to discharge him?

A. I was thinking about it very seriously.

Q. Had you reached a decision yet, that you would discharge him?

A. I did on the next day, before noon.

Q. You did on the following day, before noon?

A. Yes.

Q. What prompted you before noon on the second day to decide to discharge him?

A. Because he wouldn't do anything I told him to. [93]

Q. What did he do on the second day?

A. He was taking those forms out.

Q. You are now speaking of the column forms?

A. The column forms. I had made up my mind, that he didn't do what I told him to.

Q. Are you referring to the second day or the

(Testimony of Edward Sayler.)

first day? A. You have it in the record.

Q. You testified awhile ago that he was doing that on the first day. I want to know, was that on the first day or the second day?

A. Well, then is when I decided he wouldn't make the grade and I decided to give him another day or two to see what he could do.

Q. I am confused by your answer, Mr. Sayler. Perhaps I misunderstood you. I understood you to say just now that you were prompted to discharge the man who you observed the work that he failed to do, which you assigned him, in cleaning out the forms for the column footing.

A. That is right.

Q. On what day was he assigned to clean out the column footings?

A. I think that was the first day he worked.

Q. Then, do you say by noon of the first day he worked, you made up your mind to discharge him?

A. Not completely. [94]

Q. The first day was on the end of a work week, wasn't it? A. That is right. * * * * *

Q. (By Mr. Boyd): To be specific, only this, did you in the course of the first day, did anything further occur which in the course of the first day inclined you more to the decision to discharge him, in addition to your having observed his work on these footings during the morning hours?

A. I don't think so.

Q. So you did let him come back on the second day and work? A. Yes.

(Testimony of Everett Sayler.)

Q. Was his work improved on the second day?

A. No.

Q. Why was he not discharged at the end of the second day?

A. We decided to let him work the week out.

Q. And when you say "we did", who did?

A. His foreman and I.

Q. His foreman was Tucker?

A. And I also talked to Mr. Shuck about it. He said if the man wasn't competent to lay him off.

Q. You talked with what Mr. Shuck?

A. Mr. Shuck Senior.

Q. Did you talk to Mr. Shuck, Junior, about it?

A. No.

Q. But you say you did talk with Mr. Tucker, his own foreman?

A. Yes.

Q. Do you recall whether you talked with him on all three days, or was it only certain ones of these three days that you talked to Tucker about his competence?

A. It's pretty hard to recall that.

Q. And specifically, was your objection to the fact that he was a slow worker? Was that the objection?

A. Well, that and he wouldn't follow instructions.

Q. The failure to follow the instructions on this digging out the column footings?

A. Yes.

Q. Was there any other instruction that he failed to carry out?

A. Not that I recall at the moment.

(Testimony of Everett Sayler.)

Q. Now, he was not discharged until the evening of the 31st, is that right?

A. That is right.

Q. Did you talk with him on the evening of the 31st?

A. I don't recall. I don't believe I—I can't remember whether I talked to him or not. I don't think I did. [96]

Q. You have no recollection of any conversation with him? A. No.

Q. Do you recall that on the morning of the 31st, the business agent for the Hod Carriers' Local, namely Red Woods, came on the job?

A. He was there about noon, I think. [97]

* * * * *

Q. Bob Lewis, whom you referred to earlier in your testimony as being the one that was not employed when Kieburztz was mistakenly employed, was he later employed? A. Yes, he was.

Q. He was employed to replace Kieburztz after Kieburztz was discharged, was he not?

A. No necessarily. We needed another man at that time and it was a lapse of time in between.

Q. Well, Kieburztz was discharged on Friday evening and Lewis was hired on the following Wednesday, wasn't he?

A. I think so. Yes, that would be the following Wednesday.

Q. Lewis did produce a permit before he was put on the job, didn't he? A. Yes.

Q. By your arrangements, wasn't he?

(Testimony of Everett Sayler.)

A. No.

Q. Didn't you contact the Union and arrange for his permit?

A. No, I did not. [98]

* * * * *

Q. (By Mr. Boyd): My question of you now, Mr. Sayler, is did you not make an affidavit on August 25, before Mr. McFeely, concerning the facts of this case?

A. Yes.

Q. This document which you have in hand bears your signature, does it not?

A. Yes.

Q. And that is the affidavit which you made at that time, is that correct?

A. Yes. * * * * * [99]

Mr. Boyd: All right. It may be marked for identification. General Counsel's Exhibit No. 3. I will ask that this be marked for the purpose of further inquiry. [100]

* * * * *

Q. Now, I want to direct your attention to the third or fourth paragraph, being the paragraph at the bottom of the page, of this first page, and ask you to read that for the purpose of refreshing your recollection, if it will serve that purpose.

A. That is right. They called me by telephone and asked me if I had work for the boy.

Q. When you say "they called you", who called you?

A. The Union called me.

Q. The Union called you and asked you if you had work for whom?

A. For Bob Lewis.

Q. What did you tell the Union?

A. I told them that I did have.

(Testimony of Everett Sayler.)

Q. You told them that you did have?

A. Yes.

Q. Had he been to your construction job before that date, seeking a job?

A. Well, quite awhile before, yes.

Q. And, in fact, on this particular date, or at this particular time, that they were about to dispatch him out here, and before he was dispatched out he was at your job, too, wasn't he?

A. I believe he was.

Q. Yes. And that is what gives significance to this statement here, that I direct your attention to, that "I asked Local 242 of the Laborers' Union to let him have a permit to work until [101] school starts." Is that correct?

A. After they asked me if I had work for him, yes.

Q. Then you asked the Laborers' Local to give him a permit, is that right? A. Yes.

Q. Had he not been to the job site even before the Laborers' Local called you up? That is a question I asked you a few moments ago.

A. I think he was.

Q. Did you not send him down to the Local to get the permit? A. No.

Q. You did not? A. No.

Q. But you told him he would have to get the permit before he could work, didn't you?

A. I didn't tell him he had to, no. He went down on his own accord to get one when they called me,

(Testimony of Everett Sayler.)

if I had work for him. They asked me if I had work for him, and I don't remember how the conversation was. They stated they would give him a permit to come out.

Q. And he did produce a permit before he was assigned to work?

A. That is right. He got it of his own accord. [102]

* * * * *

Q. (By Mr. Boyd): Mr. Sayler, with reference to the statements made to you by Mr. Tucker concerning the work of Kieburtz, what specifically was the criticism, if any, that Tucker stated concerning Mr. Kieburtz' work?

A. Well, he was a good deal of the same opinion I was.

Q. I have asked you what Tucker stated?

A. You can't remember conversation that far back.

Q. Can you remember the substance of it?

A. The same things that has been stated.

Q. Did anything particularly happen on Friday that precipitated your decision on Friday to discharge him?

A. I don't remember anything specifically. My mind was pretty well made up by Thursday night, Thursday afternoon.

Q. What had occurred on Thursday, then, that had made up your mind?

(Testimony of Everett Saylor.)

A. Just watching him work. [103]

* * * * *

Q. Now, may I, for the sake of my own information, see the document that you were looking at, which showed the job as it was being worked on July 30, Thursday July 30?

A. Here. (Indicating.)

Q. You have provided that to me. Now, will you show me the page for July 29?

A. (Indicating.)

Q. Do you have the pages for July 29 and 30 in front of you? A. Yes.

Q. Will you not examine those two pages, and these are your original work records, are they not? At least, records, that you made at that time in the course of your doing, performing your work?

A. Yes.

Q. Is that correct? A. Yes.

Q. Will you not take a look at those two [105] records and then state to the trial examiner, on which day was it that the concrete was being poured on the job? Your record of July 30 shows that was the day on which concrete was being poured, doesn't it? A. Yes.

Q. And there was no concrete being poured on the next day, was there, the 31st?

A. I don't believe there was. No.

Q. So that the work records show that the concrete poured was on the second day, namely, on Thursday, July 30, is that correct? A. Yes.

* * * * *

RICHARD KIEBURTZ

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Boyd): Your name is Richard Kieburtz? A. Right.

Q. Where do you live?

A. 6314 Southeast Twenty eighth, Mercer Island.

Q. How old are you, Dick? [106]

A. Nineteen.

Q. What is your principal occupation now?

A. Student at the University of Washington.

Q. What department?

A. Electrical engineering.

Q. In the summer of 1953, this year, were you otherwise employed? A. Yes.

Q. That is, you were not in school at that time?

A. No.

Q. Were you, during the course of that summer, employed by Shuck Construction Company?

A. I was.

Q. And beginning on what date?

A. July 29.

Q. And that was what day in the week, as you recall? A. Wednesday.

Q. When did you make your first effort to gain that employment with the Shuck Construction Company?

A. On the preceding Thursday, July 23.

Q. July 23, the preceding Thursday?

(Testimony of Richard Kieburtz.)

A. Yes.

Q. Will you state, will you tell us now, what you did on July 23 concerning your getting employment at Shuck Construction?

A. I went to the school job on Mercer Island and contacted the [107] superintendent, Mr. Sayler, and asked him for work.

Q. Will you tell us in full your conversation with Mr. Sayler, as best you can recall it?

A. Well, I drove up to the job and Mr. Sayler and another man were looking over some plans in a little shed, so I walked up and asked for the superintendent, and Mr. Sayler turned around, and I told him that I was a University student and I wanted a job as a construction laborer, and that I had had previous experience. And the first thing he asked me was, did I have Union clearance. I told him I did not. And then he said that he didn't have anything right at the present time. He said that they had laid off a laborer a few days previously. I don't remember which day he said. And he said that they were going to take him on the following Monday. And he suggested that there might be something in a week or two, that I should come back. And he also suggested that I might talk to the personnel manager of the company, Lou Benson, down at their main office, and that he might have something for me on one of the other jobs, or maybe on that job.

Q. Was that the extent of your conversation with him, or was there more?

(Testimony of Richard Kieburtz.)

A. As best I remember, that was the extent of it.

Q. You say that you told him that you had had prior experience? Had you had? A. Yes. [108]

Q. In the summer of 1953 had you done any prior construction work?

A. Not in that same summer. In previous summers I had worked for Holly Hill Corporation.

Q. What type of work did you do for Holly Hill Corporation? A. Construction laborer.

Q. What type of construction was that?

A. An apartment building at Shelton, Washington.

Q. Was that the extent of your prior experience?

A. No. I had worked for Key West Builders, Incorporated, in Olympia, or rather in Tumwater.

Q. What type of work did you do there?

A. Construction laborer, in house construction.

Q. Had you had any other experience as a construction laborer?

A. I also helped my father build our house on Mercer Island.

Q. When did you do that?

A. Summer of 1952.

Q. What type of work did you do in that connection?

A. Construction laborer and carpenter.

Q. That is, you do some rough carpentry, too?

A. Yes.

Q. In your conversation, though, with Mr. Saylor, did you mention specifically this prior experi-

(Testimony of Richard Kieburtz.)

ence? I mean, did you specify what your prior experience had been?

A. I don't believe so. [109]

Q. Having talked with him, what did you do?

A. I left the job and went home and called up Mr. Benson.

Q. Did you get ahold of him?

A. Yes. I told him that I had talked with Mr. Sayler, I told him that I had talked with their superintendent on that job, and that he had suggested that I call him. And I told him that I was a University student and wanted the job for the summer, that I was not a member of the Union, and that I would take a job on any of their jobs that might be open. And he took my name, address and phone number, and he said that he would let me know if anything came in.

Q. Was that the extent of your telephone conversation with Benson?

A. I think so, yes. [110]

* * * * *

Q. Up to this time, had there been any occasion for your having a conversation with the respondent Union, Local 242?

A. Yes. I had attempted to get a permit from the Union.

Q. When did you do that? When did you make that attempt? A. On Wednesday, the 22nd.

Q. That is the preceding day? A. Yes.

Q. What was the circumstance that brought that about, Mr. Kieburtz?

(Testimony of Richard Kieburtz.)

A. Well, I had gone to look for a job as a construction laborer, and one of the places that I had gone was a restaurant construction job at the Mercer Island Shopping Center, and the superintendent on that job had asked me if I had Union clearance, and I said no, but I thought I could get it. So I went down to the Union that morning.

Q. To where did you go?

A. I went to their hiring hall and local office in the Labor Terminal.

Q. And that was on the morning of the preceding day? A. Yes.

Q. Do you recall with whom you talked down there?

A. I talked with the business manager.

Q. The man at the counter?

A. At the counter. [111]

Q. Do you recall your conversation with him?

A. Yes. I had asked him if I could get a permit to work for the summer. And he said no, that they weren't giving out any permits this summer because there were too many men unemployed who were members, and that they didn't give out permits unless most of those men were working. And then I asked him, well, could I join, become a member. And he said no, that they weren't accepting new members for the same reason, that they had too many men out of work. And I mentioned to him that I could get a job if I had a permit, but he said no, that, that summer, that there had been a lot of students in, and that they had refused them all, couldn't give any

(Testimony of Richard Kieburztz.)

of them permits because they had too many of their own men out of work. He said that the students that were working this summer were ones who had joined the Union the previous year, so they had, they had paid dues all year long, so they were members in good standing, but that they weren't giving out any permits or accepting any new members at that time.

Q. That was the extent of the conversation?

A. That was about it, yes.

Q. That was on Wednesday? A. Yes.

Q. Did you at any later time have any further conversations with anyone at the Union hall?

A. I did. [112]

Q. What brought that about? What prompted that?

A. On Friday I went back to the superintendent of this restaurant job and told him that the Union wouldn't give me clearance and asked if I could work there anyway. And he said that he'd rather try to, he said that he couldn't hire me if I wasn't a member of the Union, but that he would try to see if he couldn't get me a permit. And he said that he would have to talk to the business agent and for me to come back later, and he would call him. He said to come back that afternoon or the following Monday and he would call the business agent and find out.

Q. And?

A. And so I came back that afternoon and he hadn't called the business agent yet, but he called him at that time. He called Mr. Buchanan. And Mr.

(Testimony of Richard Kieburtz.)

Buchanan, he told me, he told me that Mr. Buchanan told him——

Mr. Croson: Just a moment.

Mr. Boyd: You may not testify what he told you Mr. Buchanan told him.

Q. (By Mr. Boyd): What was the end result of this conversation you had with this man?

A. The end result was that he told me I might still have a chance if I would go down and see Mr. Buchanan in person. He said that he was a pretty square guy and I might be able to talk to him.

Q. What did you do then, after he made that suggestion? [113]

A. Well, it was too late that day to go down and expect to find anybody in at the Union, so I went down the following Monday.

Q. This was Monday of the week in which you later got the job at Shuck? A. Right.

Q. What time was it, about, that you went down there? A. About four o'clock.

Q. With whom did you talk when you got there? Will you tell us in detail what transpired?

A. When I got there the same man was at the counter and I asked him if Mr. Buchanan was in. He said "yes", and pointed to a man back there, a man at a desk. So I walked back behind the counter and stood by his desk until I was noticed, and I said, "Are you Mr. Buchanan?" And he said, "Yes", and I said, "I am Dick Kieburtz and I was referred to you to try to get a permit to work this summer", and he said that he couldn't give me a permit and he

(Testimony of Richard Kieburztz.)

said that I should have whoever—well, I said that I had been offered a job if I could get a permit, and he said I should have whoever offered me the job call him, and I asked him if I could join, if I couldn't get a permit, if there was any way I could get clearance through the Union, and he said no, that if anyone had offered me a job I should have them call him, that that is the way it was done. And I asked him what good it would do me to have them call him, since I [114] did not see that he would give me the job anyway, give me clearance anyway, and he replied that that was the way it was done and that if anybody offered me a job I should have them call him, as all the work had to go through the hall. Then he cut off the conversation, returned to his work. The man at the counter told me that I should step around in front of the counter so these guys could get some work done, which I did.

Q. Incidentally, did you disturb the chairs?

A. I did not.

* * * * *

Q. (By Mr. Boyd): Did you hear Mr. Buchanan testify this morning? A. Yes.

Q. Did you hear the part of his statement concerning this particular episode? A. Yes.

Q. Do you remember what it was that he said that he had said?

A. He said that I had stated in effect, that it was none of his business as to who——

Q. (Interrupting) As to who you had a job with? A. Yes.

(Testimony of Richard Kieburtz.)

Q. Did you make such a statement at that time?

A. I did not. The only statement I made, that he might have [115] implied that from, was to ask him what good it would do me to have them call him.

Q. You went around in front of the counter, you say?

A. Yes.

Q. Did you have any further conversation with the dispatcher?

A. Yes.

Q. What was that?

A. I asked him how I could go about getting in the Union, and he said that he didn't know. And then I asked him how anybody ever did get into the Union. And he said that they got into the Union at a time when there was a demand for men, at a time that most of the Union's men were already working and the employers wanted more. And I said, "Do you mean there is no way at all that I can get clearance from the Union and get a job?" And he said, "That is right." And he asked me if my father had ever belonged to a Union and I said no, that he used to hire men. And he said, "Well, that explains your outlook." He said, "There is nothing I can do for you." That was about the extent of that conversation.

Q. What, then, later developed, with reference to your employment by Shuck?

A. That same day, Monday, I had gone down to Shuck's offices to try to contact Mr. Benson, but again he wasn't in. Then Tuesday evening my father received a call from Mr. Benson asking if I could

(Testimony of Richard Kieburtz.)

come to work. He said that I would be there, on the [116] Mercer Island job.

Q. And did you go to work then?

A. I did.

Q. When did you report for work?

A. About a quarter of eight on Wednesday morning.

Q. To whom did you report?

A. To Mr. Sayler.

Q. That is the gentleman who was on the stand ahead of you? A. Right.

Q. What transpired when you reported? What was said between you and him?

A. He obtained my Social Security number and name and address and he said, "We'll have to see how this Union business works out later."

Q. He made this remark to you? A. Yes.

Q. What, if anything, was said by you to him that prompted that remark? A. Nothing.

Q. Do you know what it was that prompted that remark?

A. Only that he knew I was not a member of the Union.

Q. From this earlier conversation?

A. Yes.

Q. Was there something that passed between you and him at that time that indicated he knew that you were the person who [117] had called there the week before?

A. I don't recall any words, but I believe he knew that.

(Testimony of Richard Kieburtz.)

Q. Following that, were you assigned to work?

A. Yes.

Q. And to what work were you assigned and by whom?

A. Mr. Sayler told me to get my instructions from Mr. Tucker. He called him "Chester" at the time. So I went over to him and he told me to start carrying lumber from a, it was a pile of two by fours and shiplap near the tool shed, over to another smaller pile about a hundred yards away. And there was another laborer already doing this, and he told me to follow him.

Q. Who was the other laborer?

A. Sam Swatack.

Q. Incidentally, so the record may show it, how tall are you, and what do you weigh?

A. I am six feet one and weigh 165 pounds.

Q. Did you perform any of this work to which you were assigned with Swatack?

A. I did.

Q. For about how long?

A. For about half an hour.

Q. Was there any comment to you from Tucker or Sayler concerning your work?

A. No.

Q. What work were you assigned to after that?

A. After that I believe it was Mr. Sayler who told us that that was enough, and to grab a shovel and come with him. So we went into the tool shed and Sam grabbed a pick and shovel and suggested that I grab a pick as well as a shovel, so I did, and we followed Mr. Sayler over to this excavation.

Q. And which excavation is this?

(Testimony of Richard Kieburtz.)

A. I believe it's the one for the gymnasium.

Q. Was this the wall footings or the column footings? A. Wall footings.

Q. An excavation for the wall footings?

A. Yes, it was an excavation with ditches inside it for wall footings.

Q. What specifically were you assigned to do?

A. Mr. Sayler told Mr. Tucker what he wanted done, and then Mr. Tucker gave us our specific instructions.

Q. And what were they?

A. To dig out these ditches and to, to clean them out and move them over. They were dug a little bit in the wrong place, with a mechanical shovel. And there were overhead wires which marked the outside concrete line for the wall, and he marked off a piece of lath to use for a guide stick and we were to drop a plumb line from the wires and use the guide stick to indicate how wide to dig the ditch, to indicate what the inside line of the ditch was to be. And he marked another stick for us, or I guess it was cut to length, to indicate the depth of [119] the ditch below the wires. And we were to cut the ditch over to where it was supposed to be and level it out.

Q. Is that what you did do?

A. That is right.

Q. For how long did you continue in that work?

A. For the rest of that day.

Q. Did you and Sam work side by side in doing that work?

A. No. I worked in one ditch, on the east side of

(Testimony of Richard Kieburtz.)

the excavation, and he worked in another, on the west side, to start with.

Q. And were you assigned to any other work on that first day, than this which you have now described? A. No.

Q. All right. Was there any comment to you by Sayler or Tucker concerning the quality of the work that you were doing or how you were doing the work in the course of that day? A. No.

Q. What was the work that you were assigned to in the next following day?

A. The following day, the first thing in the morning I was told to carry some sheetrock out of the tool shed over to some, inside the enclosure of the forms, the class room unit, and to help the carpenter set up some form panels on horses to use for a table to cut the sheetrock on. The sheetrock was cut for use in these forms for the pier footings. [120]

Q. Column footings? A. Column footings.

Q. Did you do any work in connection with cutting the sheetrock for the column footing forms?

A. No.

Q. What transpired? What was your next job, then?

A. After that, why, the concrete truck, the first concrete truck had arrived and was starting to pour into the wall footings, so I went over and grabbed a stick and started helping move the concrete along the forms, to tamp it.

Q. That is, to settle the concrete in the form?

A. Yes.

(Testimony of Richard Kieburztz.)

Q. Was any comment made to you while working with the carpenters concerning your, the way you were doing your work, when working with them?

A. No.

Q. When you went over to, and started tamping or settling the concrete, were you assigned to that by any specific order?

A. No. While I was doing it, however, why, Mr. Tucker came over with a stick himself and suggested that I move over to the other side of the target to work at it.

Q. What prompted you, how did you know to do that work?

A. The target is just a piece of plywood or pieces of shiplap nailed together for the concrete to hit so it can fall into the forms instead of over shooting them. I was working on one side [121] of it, and he suggested that I move over and work on the other side of it.

Q. What was it that prompted you initially to go over there and start to tamp the concrete?

A. Well, I was through carrying the sheetrock out. The carpenters said that was enough. And the truck had arrived, and they obviously needed another man over there to do it. So I went over to do it.

Q. In the course of your doing that, was there any comment to you, by anyone, Tucker or Sayler, or anyone else, concerning the manner in which you were doing that work?

A. No.

(Testimony of Richard Kieburtz.)

Q. How long did you continue in the tamping operation?

A. For about 45 minutes, I imagine.

Q. And then what happened?

A. Then Mr. Sayler told me to grab a shovel and start back filling around these forms for the column footings that the carpenters had been making up and putting into the holes.

Q. These holes were mechanically dug holes?

A. Right.

Q. In various spots around what would be the interior of the building? A. Yes.

Q. And they had set these forms in these holes?

A. Yes. [122]

Q. And your instruction from Sayler was to do what? A. To fill in around it.

Q. To throw up dirt around the form?

A. Yes.

Q. Was that the extent of your instruction from Sayler? A. At that time, yes.

Q. Was there any further instruction later?

A. Yes. Later, the concrete inspector, who was on the job had been inspecting the forms and the holes, and he talked to Sayler, so Sayler cut a stick the proper length for me and made sure all the forms were dug down as deep as that stick, so the stick would be flush with the top of the forms.

Q. So as to make sure the forms set low enough?

A. At least that deep, and to clean the debris out of the inside of the forms so they had a solid bottom.

(Testimony of Richard Kieburtz.)

Q. After giving you that instruction, what did you do?

A. I did as I was instructed. I continued filling in around them and I cleaned the debris out of the inside, and in a couple of cases where I found they weren't deep enough, why, I dug down inside the form and got them deep enough.

Q. Did Mr. Saylor or anyone, Tucker or anyone else, comment to you on the manner in which you were doing that work after you had been told what to do?

A. No.

Q. How long did you continue at that work?

A. Till about an hour after lunch.

Q. Did you work alone in doing that work?

A. No. After the walls, pouring of the wall was completed, why, the laborers who had been working on that came over and helped me fill in these holes, back filling.

Q. Doing the same type of work that you were doing?

A. Yes.

Q. You say an hour after lunch you were assigned to something else?

A. Yes.

Q. To what?

A. To continue digging out these ditches in the excavation, the same as I had been doing the day before.

Q. That is, to clean out the wall excavation, for the wall form, in the way that you had done the preceding day?

A. Yes.

Q. How long did you continue at that work?

A. Until about an hour before quitting time.

(Testimony of Richard Kieburtz.)

Q. And then were you assigned to something else?

A. Then I was assigned to the same type of work in another set of ditches.

Q. That is, at another building location, or at another ditch on the same building?

A. Another building.

Q. In relation to that work, was there any comment made to you [124] by Tucker or Sayler or anyone else concerning the manner in which you were accomplishing the work?

A. No.

Q. Or the speed?

A. No.

Q. And you say you were assigned to another building location, to do similar work at another building location, about an hour before quitting time?

A. Yes.

Q. Were you assigned alone or was anyone else assigned with you?

A. I was assigned alone.

Q. What was Sam doing at that time, if you know?

A. I don't know.

Q. Was he working with you up until the hour before quitting time?

A. I believe so.

Q. You think he was doing the same type of work?

A. Yes.

Q. All right. Did you finish out the day working on this second building?

A. Yes.

Q. What did you do on Friday, the third day? What was your assignment then?

A. To continue digging out those ditches on the second building. [125]

Q. And how long did you continue that?

(Testimony of Richard Kieburtz.)

A. Until about ten o'clock.

Q. And then was there any comment made to you on this third day of your employment, while you were working at this ditching of the second building, concerning the manner in which you were doing the work?

A. None.

Q. What occurred at ten o'clock?

A. At ten o'clock I was told to go over and help Sam carry form panels.

Q. What were these form panels and to where were you carrying them, and what was the type of them?

A. The form panels were on the outside of the forms for the class room unit. They were, I guess, about four by eight, maybe a little longer, a little narrower, made out of plywood and two by fours, shiplap in some cases.

Q. When you say four by eight, you mean four by eight feet?

A. Yes.

Q. And the plywood was what?

A. The plywood was the surface.

Q. What was the function of the two by fours?

A. Reinforcing.

Q. To where were you carrying these?

A. We were to carry those along the inside of the forms and place them end to end so that they would be in place for the [126] carpenters to put them up.

Q. Did you work alone on this assignment?

A. I worked with Sam.

Q. It took two of you to carry this long form?

(Testimony of Richard Kieburtz.)

A. Yes.

Q. Was there any comment made to you by anyone, Sayler or Tucker or anyone else, concerning how you were accomplishing this work when working with Sam? A. No.

Q. How long did you continue at this work?

A. Until about lunch time.

Q. Were you assigned any other work at that time?

A. I don't remember whether I was assigned or not, but I went back to work in the ditch again.

Q. That is, did you finish carrying the panels?

A. Yes.

Q. You finished that job and then you went back to work at the ditch? A. Right.

Q. Did anything else transpire in the course of the morning? A. Yes.

Q. What did?

A. About 10:30 the business agent came out to the job. The men called him "Red."

Q. How did you know he was a business agent?

A. I asked Sam who he was. And Sam said, "That is the guy that can get your job." And I said, "Do you mean that is a business agent?" And he said, "Yeah."

Q. What transpired? What did you observe when he came to the job?

A. Well, I observed him talking to Mr. Sayler. During the course of the conversation he pointed over in my direction, and——

(Testimony of Richard Kieburtz.)

Q. (Interrupting) Who pointed in your direction?

A. I don't remember. Either Mr. Sayler or the business agent.

Q. Then what happened?

A. Then he went over to talk with Mr. Tucker.

Q. Who did?

A. The business agent. And when he was through talking with Mr. Tucker, he came over to me and asked me if I had a card or anything.

Q. Was that his expression, were those his words?

A. Yes. He said, "Have you got a card or anything?"

Q. And what did you say in response?

A. And I said, "No, but I would like to join the Union, though."

Q. What did he say in response?

A. He said, "No, I am sorry, I can't let you."

Q. And then?

A. And then Mr. Tucker came over and said to the business agent, "We will let him work out the day." And then I continued talking with the business agent. I said, "I thought if I [128] had a job I was entitled to join the Union." And he said, "No, we have too many men on the bench, we can't take in any new members." And that was the substance of the conversation.

Q. What happened immediately after the conversation?

A. Immediately after the conversation the busi-

(Testimony of Richard Kieburtz.)

ness agent walked off and I resumed carrying the panels.

Q. Then, you continued on that particular assignment how long?

A. Well, you mean until I was through?

Q. Yes. When was it that you went from that work of carrying the panels to the next task, or returned to the original task of excavating the ditch?

A. Around noon.

Q. Did you at that time have any direct conversation with either Mr. Sayler or Mr. Tucker concerning the episode of the business agent appearing there?

A. At the noon hour, why, I talked to Mr. Sayler and he said that he would see me later to discuss this thing.

Q. Was that the extent of your conversation with Sayler? A. Yes.

Q. Did you talk it over with Tucker at all?

A. No.

Q. You had heard Tucker's remark earlier?

A. Yes.

Q. To what, then, were you assigned in the afternoon?

A. Digging out the, leveling out and placing these ditches, [129] clean out the ditches.

Q. Were you assigned from that to any other task in the course of Friday afternoon?

A. No.

Q. Was there any comment made to you in the

(Testimony of Richard Kieburtz.)

course of Friday afternoon concerning the manner in which you were accomplishing that work?

A. None.

Q. What transpired at the end of the day?

A. At the end of the day, well, it was Friday, it was pay day, I went over to pick up my check and Mr. Tucker gave me two checks, one for, for, one, through Wednesday, and the other for the other two days.

Q. Was there anything said between you two at this time?

A. Yes. He said, "Sorry, but that is the way it is." So I waited around until Mr. Sayler was through passing out checks and then I went over to talk to him, and he said, "I don't know just what to tell you, kid." He said, "We have to go along with the Union on this, or they can make trouble for us." He said, "We have to lay you off or the Union can make trouble for us." And, oh, yes, I said that I thought once you had a job that the Union couldn't get you fired. And I said, "Isn't that what the Taft-Hartley law says?" And he said that the contractor had an agreement with the Union to hire Union men through the hiring hall and they had to go along with the Union on that. And [130] I said, "That sounds like a closed shop." I was somewhat irate at that time. I said, "I thought the Taft-Hartley Law made that illegal." And he said, "No, this is a good contract and we have to honor it." And he said, "If you were my son or something, why, I could probably get the Union to take you in as a personal fa-

(Testimony of Richard Kieburztz.)

vor," but he said, "they don't have to take in anybody they don't want to." And that was——

Q. Was that the extent of your conversation with him? A. With him.

Q. Insofar as you were talking directly with him? There was a further conversation with someone else in his presence? A. Yes.

Q. We do not need to go into that. It's not material, particularly.

Following that day, which was Friday, did you have any further conversation with any representative of the Shuck Company?

A. The following Monday, after I had filed a complaint against them, I went down to their office to notify them that that complaint had been *file*, so it wouldn't come as such a shock to them.

Q. How did you happen to do that?

A. My father suggested that it might be just a kind of a shock to them, just to get it in the mail, and I might go down to explain it to them so they wouldn't just, because I wasn't actually [131] mad at them. They had given me a job, which no one else would do without the Union membership.

Q. With whom did you talk?

A. I talked with Mr. Gene Shuck.

Q. Eugene Shuck, the gentleman who testified here at some length this morning? A. Yes.

Q. Would you tell us what your conversation was with Mr. Shuck at that time?

A. I told him that I had been fired because I didn't belong to the Union and I said that I was fil-

(Testimony of Richard Kieburztz.)

ing charges with the National Labor Relations Board and he would probably get his copy in the morning and that I just wanted to let him know so it wouldn't come as so much of a surprise to him. And he said that he knew Mr. Benson had hired me, but he didn't know I had been laid off. And he asked me how I had been doing, if I had been putting out, and I said yes, I had been doing fine. And he said, "Well, we will just have to see how it turns out." [132]

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Cross Examination * * * * *

Q. (By Mr. Croson): After Mr. Benson called you, you reported, then, without any further direction, immediately to the job. You reported there on Wednesday morning? A. Right.

Q. And you talked with whom, then?

A. With Mr. Sayler.

Q. And Mr. Sayler had previously talked with you, had he? A. Yes.

Q. That was before you went to see Mr. Benson, wasn't it? A. Yes.

Q. Now, then, did you, on the day that you went out to the job, did you have any extended conversation with Mr. Sayler? A. Not extended.

Q. All right, now, then, can you again give me just what you and Mr. Sayler talked about and your conversation, as nearly as you can?

A. When I reported for work?

Q. Yes.

(Testimony of Richard Kieburztz.)

A. I told Mr. Sayler that Ben Shuck, I believe at that time I thought that was who had called, that is what my dad thought who had called me that night. I didn't know for sure, but I said that "Ben Shuck" had called me and told me to report for [135] work. And he said, "O. K. I guess we can get that Union business straightened out later."

Q. Now, what had you previously told Mr. Sayler about the Union business?

A. I had just told him that I was not a member, didn't have clearance. [136]

* * * * *

Q. All right. Now, who handed you your check?

A. Mr. Tucker.

Q. Who was the first person to say anything to you the evening of Friday, the 31st, when you got your checks? A. Mr. Tucker.

Q. Did you know when you got your two checks that that meant that as far as you were concerned, that your employment was at an end?

A. I did.

Q. How did you happen to know that?

A. Because I happen to know that it's the custom in that industry to give a man his check through the, all the time he has worked, to lay him off, and that all lay-offs of that type are considered permanent unless otherwise specified.

Q. Now, you had been employed as what? Give me the classification of your employment.

A. Construction laborer.

(Testimony of Richard Kieburztz.)

Q. Construction laborer. In other words, that was common laborer? A. Yes.

Q. You had worked before at common labor, as you have testified? [138] A. Right.

Q. How long were you employed on the Holly Hill job? That was 1952, I take it?

A. Not Holly Hill, no.

Q. When was the Holly Hill job? When were you working there? A. About 1950.

Q. About 1950? A. Yes.

Q. You were 16 years old at that time?

A. Right.

Q. How long were you employed there?

A. About two and a half months.

Q. About two and a half months. Did you have any permit of any kind to work at that time?

A. No.

Q. No permit of any kind? A. No.

Q. How long were you employed on the Key West building job?

A. About two and a half months.

Q. And what year was that? A. 1952.

Q. Did you work in 1951? A. Yes.

Q. Where were you employed then?

A. Part of the summer for Key West Builders and part of the [139] summer building our own house, working for my dad.

Q. Am I in error, that it was '52 that you were working with your father to build your house? My notes say that it was 1952.

(Testimony of Richard Kieburtz.)

A. That is right. I made a mistake. It was '51 that I worked for Key West Builders.

Q. Now, if I have it right, two and a half months in '50 for Holly Hill, and two months in 1951 for Key West, and then in '52 you worked for your father? A. That's right. [140]

* * * * *

Q. Did you say anything to Mr. Sayler at any time about the fact that you could take care of the Union situation? A. No.

* * * * *

Q. When the Union representative—I will speak of him as you do—"Red"—came on the scene, did you note the time that he came [142] out there?

A. It was about 10:30, I think.

Q. How do you fix that?

A. Just approximately.

Q. It was sometime after you had gone to work?

A. Yes.

Q. You would go to work at what time?

A. Eight.

Q. And, as best as you can tell us, it was around 10:30? A. Right.

Q. Something else occurred at ten o'clock which you do remember?

A. Well, at approximately ten o'clock I began carrying the form panels.

Q. Did Red say anything to you, or did you speak to Red? A. He said to me——

Q. (Interrupting) He opened the subject?

(Testimony of Richard Kieburtz.)

A. Yes. He said, "Do you have a card or anything?"

Q. And then you answered no, of course.

A. I said, "No, but I would like to join the Union."

Q. And then, as I understand it, he said they couldn't take you in because——

A. (Interrupting) He said, "I can't do a thing for you."

Q. Did that end the conversation?

A. No, that didn't end it then. Mr. Tucker came over and said [143] to Red, "We will let him work out the day." And then I talked to Red some more.

Q. And what was the further conversation with Red?

A. I said, "I thought if I had a job I was entitled to join the Union." And he said, "No. We have too many men out of work and we have to look out for them. We can't let you in."

Q. You said something about some conversation with Mr. Sayler with respect to, if you were his son or something of that nature. Straighten me out on that.

A. Oh. When he was explaining to me how he couldn't, well, the fact, he meant that he couldn't do anything to help me out with the Union, he said that if I had been his son or some close relation of his, then he might be able to get the Union to give me a permit as a personal favor to him.

(Testimony of Richard Kieburtz.)

Q. Now let us go back just a bit now, we have tried to cover conversations now. Let us go back to try to take up the nature of the work. Did you find that work pretty heavy?

A. Oh, reasonably so.

Q. When you were using the shovel, were you shoveling loose [144] dirt?

A. No. The first day I was using the shovel and the pick. I was picking and shoveling hardpan.

Q. And was anyone working near you or with you in that work?

A. Sam was working near me.

Q. Near. Now, about how far away?

A. He was working in another ditch, in the same excavation, doing the same——

Q. (Interrupting) About the same length ditch?

A. Yes.

Q. About the same depth ditch? A. Yes.

Q. How did you finish your jobs? Did you and Sam finish your ditches about the same——

A. (Interrupting) Well, it's very difficult to make a comparison, since Sam was called off the job at various times by carpenters and, well, supervisors, to help them.

Q. Did he finish the ditch on the west side as soon as you finished the ditch on the east side?

A. No.

Q. He didn't get his through as soon as you did?

A. No.

(Testimony of Richard Kieburtz.)

Q. How long was the ditch that you dug on the east side, or prepared on the east side?

A. About 30 feet or 35 feet. [145]

Q. Did you measure it or are you trusting to your memory now? A. I am estimating.

Q. You are estimating now, as the ditch appeared to you, then? A. Well, more or less.

Q. All right. When was your first assignment, then, to the cleaning out of these holes to prepare them for the pouring?

A. About, oh, around nine o'clock Thursday morning.

Q. And, as you told us, I want to clear this up certainly, the assignment was through Mr. Tucker, Tucker? You worked for him first?

A. I believe I worked for Mr. Sayler.

Q. For Mr. Sayler? A. Yes.

Q. He assigned you to that job? A. Yes.

Q. Did he at that time show you how to do it, and what to do?

A. At that time he told me to fill in around the forms.

Q. He didn't give you any cleaning up work or anything of that kind at that particular time?

A. No.

Q. How long after that was it that he did go back and give you instructions as to how to clean up, preparatory to the pouring?

A. Probably about half an hour.

Q. Did you go right to work on that job?

(Testimony of Richard Kieburtz.)

A. Yes. [146]

Q. Did you follow it through until he saw you again?

A. Well, I followed it through until the job was done.

Q. Until the job was done? A. Yes.

Q. So you left that job, then, as having been completed? A. Right.

Q. And ready for pouring? A. Right.

Q. How many of those holes were there?

A. Well——

Q. (Interrupting) That you had prepared and left, now, ready for pouring? A. Probably 16.

Q. Sixteen of them.

A. Something like that.

Q. And they were all ready, then, for the cement to be placed in? A. They were.

Q. And you had followed his instructions in cleaning them out? A. Yes.

Q. Did you see Mr. Sayler do any work on those holes after you had finished them?

A. I did not.

Q. Did Mr. Sayler have you go back to do any work on them? A. No. [147]

Q. Did you see anybody else doing any work on those holes? A. No.

Q. When was it that you saw the inspector, cement inspector, either looking at the job or talking to Mr. Sayler?

A. About the time I started working on that.

(Testimony of Richard Kieburtz.)

Q. About the time you started working on it?

A. Yes.

Q. Were you so employed and in a position to know when the cement was poured?

A. Into those forms?

Q. Yes. A. Yes.

Q. Had anyone else touched those holes, those 16 holes, prior to the pouring of the cement?

A. I don't believe so.

Q. You were present at all times there?

A. Oh, reasonably——

Q. (Interrupting) Within seeing distance and hearing distance?

A. Yes. I wasn't watching them at all times, but I don't believe anybody else touched them.

* * * * *

Cross Examination

Q. (By Mr. Jackson): Mr. Kieburtz, you have, I believe, [148] testified here that you were out at the Mercer Shopping Center and a man out there told you he might have a job if you would go down and see Mr. Buchanan, is that correct?

A. He told me I did have a job if I could get Union o.k.

Q. Then you went, as you said, went down to see Mr. Buchanan, and that was about July 24? Is that correct? A. No. It was about July 27.

Q. Oh, about July 27. And you testified you went in to see Mr. Buchanan. That is correct, is it?

A. That is correct.

(Testimony of Richard Kieburztz.)

Q. And Mr. Buchanan asked you if you had a job, is that correct?

A. No, I don't believe he asked me if I had a job.

Q. Well, did you tell him you had a job?

A. I told him I—yes, I told him—I didn't tell him I was working, I told him I could get a job if I had, yes, I told him there were two or three companies who would employ me if I had Union o.k.

Q. I see. And did he ask you where you could get those jobs? A. No.

Q. Did you have any conversation at all about where you could, where you might have a job?

A. Not except that he told me to have them call him.

Q. I see. O. K. Did you tell him that you wouldn't furnish the name of anybody where you got a prospective employer? [149] A. No.

Q. And he told you, then, the procedure of hiring students where they were just working for the summer, that for the prospective employer to call him, is that correct?

A. He didn't tell me that was their policy. He said that if I knew of anyone who had a job, to have them call him.

Q. I see. And did he tell you that if the employer, the prospective employer, would call him, why, he would then work out a permit for you to work? A. No, he did not.

Q. Well, did you ask him if a prospective em-

(Testimony of Richard Kieburztz.)

ployer would call him, whether he would give you a permit?

A. Well, I asked him what good it would do me to have an employer call him.

Q. You asked him what good it would do you to have an employer call him? A. Yes.

Q. Why did you ask him that?

A. Because I was under the impression that it would do me no good.

Q. I see. In other words, you just concluded that.

A. I wouldn't say that I concluded that. That was my opinion and I asked him to give him a chance to affirm or deny the opinion.

Q. Did he tell you that he wouldn't give you a permit if you [150] had the employer call the Union about your work?

A. No, he didn't say that.

Q. He didn't say that? A. No.

Q. So you just concluded that if you had the employer call him about getting you a permit, it wouldn't do you any good?

A. You might say that.

Q. So you weren't going to have any employer call the Union about getting a permit for you, is that correct?

A. You have to understand that I already had had one employer, I don't know if I mentioned this, but I already had one employer call.

(Testimony of Richard Kieburtz.)

Trial Examiner Royster: You testified about it.

The Witness: Testified about it?

Trial Examiner Royster: Yes.

A. (Continuing) —Well, one employer already called, and he told——

Q. (By Mr. Jackson): That is the man you were asking about, that told you to go down and see Mr. Buchanan? A. Yes. [151]

* * * * *

Q. Well, when Mr. Buchanan told you that if you would have the employer, the prospective employer, call him, didn't he tell you that if that would occur, that you would get a permit to work for the summer?

A. No, he didn't tell me that.

* * * * *

Q. And he told you it was the practice that the Union had had for students who were being employed during the summer, if they [152] got a job, to have the employer call the Union or call him?

A. He didn't put it that way, he didn't say that it was the practice for students to, who were employed to have the employer call. He just said that I should have the employer call.

Q. Isn't that what you said that he had told you that that was the procedure they were following there at the Union?

A. No, he didn't tell me that was the procedure. He just told me to have them call the Union. He didn't imply, at least I didn't think so, that that

(Testimony of Richard Kieburtz.)

was the procedure. Wait, I take that back. He did say, "That's the way it's supposed to be done, the employer is supposed to call us." [153]

* * * * *

Further Cross Examination

Q. (By Mr. Croson): When you were seeking employment, you sought employment as a common laborer? A. Yes.

Q. What was your understanding as to what range common labor covered?

A. What range?

Q. Yes. What range of work. What was it?

A. Oh, digging, concrete work, stripping forms, cleanup, carrying lumber. Just general. [158]

* * * * *

Redirect Examination

Q. (By Mr. Boyd): Mr. Kieburtz, three questions. Mr. Jackson [159] put to you a question as follows: "Red Woods made no statement that you could not work on that job?", to which you answered, "Right." Do you mean by that, that he did not make that statement in so many words?

A. That is right.

Q. Or did you mean by that that he made no statement at all to you, concerning your working on the job?

A. He didn't say it in so many words.

Q. That was the purport of your answer?

A. Yes.

* * * * *

(Testimony of Richard Kieburtz.)

Q. Now, one other point only. Mr. Croson, in inquiring of you concerning the cleaning out of the footings for the columns, the pier footings, he listed from you that there were some 16 [160] that you had cleaned out.

A. Approximately.

Q. More or less, approximately. Were there others in addition to that, which, in being instructed to clean out, you had filled in around.

A. No. The ones I had filled in around before being instructed to clean out, I went back and cleaned out.

Q. And those were included in the 16 that you worked on?

A. Yes.

Q. Were those all the forms that were cleaned out and were filled around before that cement pour was made?

A. No. There were some others.

Q. Done by these other men?

A. Yes.

Q. How many other men were assigned to finish up the work before the concrete pourers came in?

A. Two.

Q. Who were they? Do you know them by name?

A. Mr. Root, I believe is his name.

Q. Mr. Leonard Root?

A. Yes.

Q. And?

A. And Sam.

Q. Sam Swatack?

A. Right. [161]

Q. The other two laborers were put on the same job to get the work accomplished before they came in to pour the concrete?

A. Right.

Q. So far as you know, did either of those two men work on any of these holes that you had worked on?

A. No.

(Testimony of Richard Kieburztz.)

Q. And do you have any idea how many such pier footings there were altogether? Do you have any judgment on that, any recollection about it?

A. Oh, maybe 30, something like that.

* * * * *

Mr. Boyd: General Counsel rests. [162]

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EVERETT SAYLER

a witness called by and on behalf of the Respondent employer, having been previously sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Croson): You have stated your position and you have also stated the time that you were employed by the E. F. Shuck Construction Company. You have also stated that you were the general superintendent to this job. Now, Mr. Saylor, I want to follow through on all conversations with you and acts by you with respect to this young man. When was your very first contact with him?

A. Approximately ten days before he came to work.

Q. And that was where? A. On the job.

Q. On the job? A. Yes.

Q. What, if anything, did you say to the young man when he came? You have already told us about his coming and making application.

A. I told him I didn't have any work for [163] him then, but he might make an application down

(Testimony of Everett Saylor.)

at the office, there might possibly be a job there for him. [164]

* * * * *

Q. Was there anything at that first conversation, just so that the record is clear, just repeat what took place there between you and the boy when the boy came to work.

A. I asked him for his Social Security, his address, his telephone number, and things like that. I forget, I may have asked him if he belonged to the Union. I try to get all that information I can, because it's a hazardous job. If a man gets hurt, you want to find somebody to look after him. So I usually try and get all the information I can about a man who comes to work for me.

Q. What, if anything, was said by him with respect to Union or Union affiliation or anything of that nature?

A. Nothing that I recall.

Q. Nothing that you recall. Then you turned him over to the foreman, as I understand it?

A. That is right. [168]

* * * * *

Further Direct Examination

Q. (By Mr. Croson): In trying to follow the conversation down, I omitted one other thing. Did you have any conversation with [173] Mr. E. F. Shuck, Senior, with respect to the work being done by the young man?

A. Yes. Yes, we talked it over. I told him I

(Testimony of Everett Sayler.)

didn't think that he was going to make the man that I thought we should have on the job.

Q. Was Mr. Shuck himself, Mr. Shuck, Senior, personally on the job at the time that you were——

A. (Interrupting) Yes. He and I were observing the boy at the time.

Mr. Croson: That is all.

Cross Examination

Q. (By Mr. Boyd): On what occasion was this, Mr. Sayler? A. What do you mean by that?

Q. What day was this?

A. It was Thursday, I believe.

Q. On Thursday, Mr. Shuck was on the job then?

A. Mr. Shuck was on the job every day.

Q. You are talking about Mr. Shuck, Senior, I am trying to go pick out what day that was. On what day was it you talked with Mr. Shuck concerning Mr. Kieburtz?

A. It was on Thursday.

Q. What was Mr. Kieburtz doing at this time?

A. I can't recall those details, sir.

Q. You say you were observing him?

A. Yes. [174]

Q. What were you observing him doing?

A. Watching him move around, trying to do something. I think he was working over on the classroom somewhere.

(Testimony of Everett Sayler.)

Q. When you hired Kieburtz, you didn't hire him as an extra man, did you?

A. All men are extra.

Q. All labor is intermittent employment, isn't it?

A. Yes.

Q. Kieburtz was in no different category than any other man who would be on the job?

A. No.

Q. When you hired Lewis later, it was subject to being laid off when you didn't need him?

A. Two or three days, or a week.

Q. The fact was, you kept Lewis on the job several weeks after that, though, didn't you?

A. I think so, yes.

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CHESTER A. TUCKER

a witness called by and on behalf of the Respondent employer, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Croson): State your name. [175]

A. Chester A. Tucker.

Q. You reside where?

A. 4227 South One Hundred Forty Second.

Q. How long have you lived in Seattle?

A. Since 1927.

Q. What is your occupation?

A. At the present, labor foreman, and laborer.

Q. Foreman and laborer?

A. That is right.

(Testimony of Chester A. Tucker.)

Q. You mean by that, that you are a working foreman? A. That is right.

Q. For what company?

A. Shuck Construction Company.

Q. What was your employment on or about the 29th day of July 1953?

A. I was a labor foreman for Shuck's.

Q. How long had you been working for him prior to that?

A. I think, if I am not mistaken, the week before, on Monday.

Q. About a week before? A. Yes.

Q. You are still employed by him?

A. That is right.

Q. And while you were employed by him, from July 29, 1953 through July 31, 1953, what were your duties?

A. I was to dispense the work out and do [176] work myself right along with the crew.

Q. You were what is termed as a "job foreman"? A. Well, labor foreman.

Q. Labor foreman? A. That is right.

Q. When was your first contact with Mr. Kiebertz, the young man in this matter?

A. Well, the first morning that he went to work, which was on Wednesday.

Q. On Wednesday?

A. Yes. And I detailed him, if I am not mistaken, to move this lumber, as he has so stated. Mr. Sayler and myself at times, where one of us is busy and the other one isn't, he dispenses the

(Testimony of Chester A. Tucker.)

work where the other one can't dispense it, if he is doing something else that is a little more important than what the other man is doing.

Q. Now, what did you assign that young man to? A. Moving two by fours and shiplap.

Q. When was your next contact with the young man?

A. Well, it was continuous practically, working with the man, in and around him at all times, if this was to be done, or that was to be done, he or Sam or Leonard Root, one of the four of us, would do it, or two of the four of us.

Q. Did you have anything to do with assigning him to the cleanup work, as far as the pits were concerned? [177]

A. I think I did send him over to do the work. Saylor wanted someone, so I sent him over to do it. And he was on the concrete pour, if I am not mistaken, that was after the trucks come out—well, am I getting ahead of myself here? Was that on Thursday?

Q. This was on Wednesday.

A. Wednesday. I am going to go back a ways. They were digging those, after they were machinery dug, on Wednesday, or previous to Wednesday we had to hand-dig those and level them out.

Q. Did you assign him to that work?

A. And then on Wednesday, if I am not mistaken, he was assigned right along with the other boys, to dig these down to grade and level them out so the carpenters could put the forms in.

(Testimony of Chester A. Tucker.)

Q. If I understand it correctly, he was the newest laborer who was on the job?

A. That is right.

Q. I will ask you if you did observe his work.

A. I did.

Q. What was your conclusion with respect to him as an employee?

A. Satisfactory, but he wouldn't take orders.

* * * * *

Q. (By Mr Croson): Just what do you mean by that?

A. Well, you would ask the man to do something and he would do it his own way, not the way that he was instructed to do it. [178]

Q. Do you refer particularly to any particular matter? A. Well, one, yes.

Q. That you have in mind?

A. Yes. In the boiler room pit. In fact, he didn't do his work correctly there, and if I am not mistaken, from conversation I have heard since then, he was called back.

Q. Just a moment. You can't—

A. (Interrupting) I didn't hear it at that particular time, but the carpenters called someone else to finish his work up.

Q. Did you and Mr. Sayler have any discussion in your respective position as job foreman and superintendent?

A. Yes. When I work 60 and 70 men I am not a working foreman, where I am not a working foreman, only the man that just sees that the work is

(Testimony of Chester A. Tucker.)

done, and if a man doesn't do his work, he just doesn't do it, and I can't keep him around. I have to put out my work. That is expected of me by the company.

Q. Did you make a report to Mr. Sayler?

A. To Mr. Sayler, that "I didn't think the man would cut the mustard," as I put it. [179]

* * * * *

Q. In your judgment, was the young man a satisfactory employee for the E. F. Shuck Construction Company on this particular job?

A. He was satisfactory, but would not take orders, as I have so stated before. [181]

* * * * *

Cross Examination * * * * *

Q. (By Mr. Jackson): Did you ever have any discussion with Mr. Kieburztz on the job about him, about a Union permit or a Union work permit?

A. No. He come through the office and I took it for granted that he was shifted from one job to the other, as E. F. Shuck employees are.

Q. So you had no discussion as far as the work permit or——

A. (Interrupting) No, he hadn't discussed it with me, or hadn't approached me——

Q. (Interrupting) And you hadn't approached him? [183]

A. No. I took it as it was, through the office.

Q. You assumed he came on the job just like any other laborer comes on the job, is that correct?

(Testimony of Chester A. Tucker.)

A. That is right.

Mr. Jackson: I think that is all.

Cross Examination

Q. (By Mr. Boyd): You are a member, are you not, of Local 242 yourself? A. Correct.

Q. Were you dispatched to the job?

A. Was I dispatched to this job?

Q. Yes.

A. No. Working as a foreman, I don't have to be dispatched.

Q. That is right. Now, you did know Red Woods personally?

A. No. I haven't known Mr. Woods, other than on the job. That is my first employment in the section that he has jurisdiction as business agent over.

Q. That is the matter to which I was referring. When he came on the job, he came on the job——

A. (Interrupting) The second time he was on the job, I had recognized him from the first time he was on, at which I introduced myself, and I knew who he was the second time he was on the job.

Q. You knew he was the assistant business agent of Local 242?

A. I thought he was a business agent. [184]

Q. On this occasion when he came on Friday, he did talk with you?

A. I think he said a couple of words. I don't know what he said right off hand, but I think he

(Testimony of Chester A. Tucker.)

did tell Mr. Kieburztz to get himself straightened out with the Union. No implications that he was going to work there, or if he wasn't going to work there, he was going to work with any other place. He just told him to get straightened out with the Union.

Q. You heard him say that?

A. Yes. And he also told him to come down and see that he got straightened out with them.

* * * * *

Q. Now, you made an allusion to Kieburztz working on the boiler room pit.

A. Illusion? It was a fact.

Q. You referred to him, you alluded to him working on the boiler room pit. Where is this boiler room pit?

A. It is approximately 26 feet from the administration building, just across the walkway.

Q. How big an excavation is this?

A. Well, where the boilers sat, it was approximately 16 by, [185] approximately 20 by 16.

Q. What was the work to which these laborers were assigned, with reference to that?

A. Digging, putting wall together up for the boiler to set in, within the building.

Q. Was this a pit? An excavation in the ground?

A. That is right. Then they had to use a pick and shovel and get it down to grade.

Q. How deep was this excavation?

A. About four feet.

(Testimony of Chester A. Tucker.)

Q. At the bottom of this four foot excavation, they were digging that down to how much farther, what depth?

A. I think to a depth of about three foot. That was just in the boiler pit itself. They had two along side each other.

Q. Kieburtz was assigned to what particular task in the boiler room excavation?

A. If I am not mistaken, Mr. Kieburtz was digging on the east end and Sam Swatack on the west end. There were two pits running along side of the other, and I am not sure who was where, to tell you the truth.

Q. Do you recall on which day it was he was assigned to this work?

A. I think, if I am not mistaken, it was Wednesday, and also Friday.

Q. Wednesday and Friday? [186]

A. And he was also on the administration building. In fact, they were all over the place. When they had something to be done, I had them in there doing it, or I did it myself.

Q. In order that I may understand this, Mr. Tucker, this boiler pit excavation that you refer to has no connection with the excavation for footings for the walls of the building. That was a separate excavation?

A. That is right. This is within the building itself.

Q. Inside what would be the foundation wall?

(Testimony of Chester A. Tucker.)

A. Yes. But they were also foundation walls for the boiler pit, for the boiler to sit in.

Q. It is your recollection, do I understand, that he did some of the work in this boiler pit excavation on both Wednesday and Friday?

A. If I am not mistaken, yes, he was in there both of those days. Because Thursday, I am positive, we all poured, poured this concrete, and after we got that done we had to backfill for the following pour for the following footings, up to the center of this building, and also getting ready for the west side of the class room, footings and walls.

Q. You say, so far as actual performance of the work that he was doing, it was satisfactory, but he wouldn't take orders?

A. He was a little bit too headstrong. He wanted to do it his own way. That is why I was put there. If I didn't know how to do that work, I presume, anyway, that I wouldn't be there. [187] Someone else would be doing what I was supposed to do, getting the work out, in that case.

Q. Will you give us specifically your recollection when you gave him orders that he would not comply with?

A. Specifically it was in the boiler pit. I asked him to come over to drop this string down from the wire. It wasn't that particular thing that I am getting at. I asked him to move the wall over where it was supposed to be put, but I come back and he hadn't done anything about it. So what am I to think of the man, if he wants to do the work him-

(Testimony of Chester A. Tucker.)

self, his own way, why, then why should I tell him what to do?

Q. This boiler pit, it's in what building?

A. It's in the boiler room building.

Q. It is a separate building, the boiler room building? A. That is right.

Q. Is there a middle partition, a footing for a middle partition in the boiler room building?

A. That is right.

Q. There is? A. That is right.

Q. Is this excavation that you are referring to, the excavation for the middle partition?

A. It is for the boiler pits themselves.

Q. For the feet of the boiler to rest on, the concrete footing for the boiler to rest on? [188]

A. No. Now, this is built up three foot. And then they have an iron base (Indicating) for the boiler to set on this iron base. Yet, this iron base sits within four walls of concrete.

Q. Yes?

A. And it also has a slab on the bottom of concrete. So that is what these boys were digging out, these walls up through here (indicating) and around this way. (Indicating)

Q. When you say "these boys", you mean Kie-burtz and Sam?

A. Mr. Kie-burtz and Mr. Swatack.

Q. Did they also dig the footings for the outside walls at that particular time?

A. No. Only on the pits. That was a rush order at that particular time.

(Testimony of Chester A. Tucker.)

Q. The specific work that they were assigned to do, you say, was that of relocating what would, or rather moving over the excavation?

A. Foundation, that is——

Q. (Interrupting) That is, digging over it so the foundation could itself be moved over?

A. Be put in line with what it was supposed to be put, yes.

Q. And there was a guide line that they dug with reference to? A. That is right.

Q. And the size of that building was about what? A. About 40 by 24, I think.

Q. And the size of the pit was what? [189]

A. Those pits were three foot, and there was a place between them that was about three foot by twelve, if I am not mistaken.

Q. Do I understand that the pit itself had walls?

A. That is right. The pit itself had walls, three foot high walls, and then this iron bed sat down in there, and the tanks, the boiler, sat on top of that.

Q. Who else was working as a common laborer on these particular boiler pits, besides Kieburtz?

A. Sam, and also Root did a little work on them, too.

Q. How did you classify that work, in making out your daily report?

A. Well, "hand excavation", if I am not mistaken.

Q. Hand excavation?

A. I think that is the way it was written up on the report.

(Testimony of Chester A. Tucker.)

Q. Was any of that work done in the following week?

A. Yes. There was some of it. But mostly it was on top.

Q. But I mean the excavation for the walls of the boiler pits.

A. No. That was finished that week.

Q. Who gave Kieburztz the instruction as to how the work was to be done in the boiler pit?

A. Well, I don't know. I just assigned him to the job and, as I said before, I took it that he was a man from the company, he knew what he was doing, until I had my own theories of what he did know and didn't know. If a man doesn't strike you where he can fulfill his duties, then you start thinking about letting [190] him go, and getting someone that can.

Q. But you did not give him the specific instructions as to what he was supposed to do in the boiler pit?

A. Just to dig this footing out, which I told him he could follow a line, and Sam was down with him, so I figured they could get along to where they were supposed to get along.

Q. Incidentally, this Bob Lewis who came on the job later, he came on the job with a permit, before he was put to work, did he not?

A. Yes. He showed me a permit before he went to work. [191]

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SAM SWATAACK

a witness called by and on behalf of the Respondent company, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Croson): Your name is Sam Swataack? A. Yes, sir.

Q. Where do you live, Mr. Swataack?

A. 3922 Eddy Street.

Q. How long have you lived in Seattle, Mr. Swataack?

A. Well, the second time I was, the second time, since May 1938—48, I mean.

Q. '28? A. '48.

Q. What was your occupation, Mr. Swataack, on or about the latter part of July, 1953, this last July?

(No response.)

Q. Where were you employed this last summer? A. Mr. Shuck's job, on the school.

Q. On Mr. Shuck's job? A. Yes.

Q. What school was it?

A. Mercer Island school.

Q. Mercer Island school. Do you know [205] when you went to work there, Mr. Swataack?

A. Well, I am not exactly certain about that. In the middle of July, I suppose, something like that.

Q. Do you know Mr. Kieburztz, who is sitting here at the table? A. Yes.

(Testimony of Sam Swatack.)

Q. Did you and he work together on that job?

A. Yes. Three days, I think.

Q. Three days? A. Yes, I think.

Q. Do you remember the day that he first came out there? A. Yes. I remember that.

Q. And what work were you assigned to that day? Speaking about you now. What work were you assigned?

A. Well, we carried lumber and cleaned up for footings, ditches.

Q. Do you know whether or not Mr. Kieburtz was doing the same kind of work?

A. Well, it seems to me he is not experienced.

Q. Was he assigned to the same kind of work?

A. Yes, labor.

Q. Did he carry any lumber that day?

A. Yes.

Q. What did he do with reference to the footings?

A. We cleaned her up and digged a few inches here and there, that machine, they dig rough, so we have got to prepare, and cleaned it up, and we digged some places a little bit more, and [206] so on.

Q. What other work did you do during the period of time that Mr. Kieburtz was there?

A. Oh, we would do the same jobs, but once in a while the carpenters would call me to bring some lumber or something else over to them.

Q. I will ask you if the two of you were at any

(Testimony of Sam Swatack.)

time assigned to digging the ditches or dressing up the trenches? A. Yes, we did. [207]

* * * * *

Q. Yes. You said a moment ago, Mr. Swatack, that Mr. Kieburtz seemed to be inexperienced. Just tell us what you mean, now, by that?

A. I mean, he come in to me many times and asked me how should be done this and that, you know, and things, and the same way, I have been working five years that job and I can tell easy the old-timer working with me, or just youngster beginning, you knew, I can tell easy, it's——

Q. Did he do as much work as the, as you did? That is, in a day?

A. I can't say that because maybe he did it, but it's not how much you work but how much is done on a job. That is what I figure.

Q. How much you get done on the job?

A. Yes.

Q. Did he get as much done on the job as you got done on the job?

A. Well, I don't pay much attention to that, because it's not my job, but I don't think so.

* * * * *

Cross Examination

Q. (By Mr. Boyd): Mr. Swatack, do I understand from your testimony that on the first day he came on the job, that you and he were first assigned to carry lumber?

A. Yes, a few. Not long, maybe a few minutes, half hour.

(Testimony of Sam Swatack.)

Q. And then following that, you were assigned to do some excavating on some trenches?

A. Yes.

Q. In order that we may be clear, do you know what these trenches were for?

A. I don't know. I know it was for the bottom of that building, to put the concrete.

Q. It was for the footing of the wall, is that right? A. That is right.

Q. Have you been on the job there since the job has been completed, or are you still working there? A. Yes.

Q. They have built a wall there now, haven't they?

A. Well, not yet, but we have got the concrete poured.

Q. You have got the concrete poured?

A. The wall is not built yet.

Q. The wall is not built yet? A. Yes.

Q. But it's put in there for the purpose of a footing for a concrete block wall, is that right?

A. That is right. [211]

Q. And that was the trench that you and Kie-burtz, the type of trenches that you and Kie-burtz were working on that morning? A. Yes.

Q. Now, in order to get the thing clear, was this trench up at ground level, or was it down in an excavation?

A. Ground level? You can't put a trench on the top of the ground.

Q. I know that.

(Testimony of Sam Swatack.)

A. I am sorry, but——

Q. (Interrupting) Let me put it this way, Mr. Swatack——

A. (Interrupting) That is kind of catchy to me, because if I make a hole in the ground, it can't be on the top of the ground.

Q. I suspect you are right about that. Now, may I ask you the question and perhaps I can make myself understood to you? A. Yes.

Q. Had this trench been dug by hand or by means of a machine?

A. Machine, but machine, you don't dig a hundred per cent with that, you know.

Q. All right. Now, this trench that you speak of, how wide was it?

A. Oh, approximately two feet.

Q. About two feet wide?

A. Yes, maybe more, maybe less.

Q. And how deep was it?

A. I, if I don't be mistaken, about 18 inches.

Q. About 18 inches deep?

A. About. I am not sure.

Q. Again, I ask you, was this trench that you were working in, which was two feet wide and 18 inches deep, was it dug down from ground level 18 inches deep or was it in the bottom of an excavation 18 inches deep?

A. I think from the top of the ground.

Q. From the ground level, is your recollection?

A. Yes.

(Testimony of Sam Swatack.)

Q. Have you been, are you working around that building now? A. Yes.

Q. Is there not a basement in that building?

A. No.

Q. There is no basement in the building?

A. No.

Q. Was there at that time an excavation for the purpose of putting a concrete floor at a level higher than the ground level in that building?

A. I——

Q. (Interrupting) I will ask the question again. It is confusing. Was there a large excavation in the, inside the walls, where these walls were to be?

A. No, it was all level up, all to the ground——

Q. (Interrupting) It was level, except for this little trench that was two feet wide and 18 inches deep? [213]

A. Practically, yes.

Q. And those were the trenches that you worked in on that first day?

A. With him, yes.

Q. With Kieburtz?

A. Yes. [214]

* * * * *

Q. Was there any time, then, when you and he worked in the same trench?

A. Well, for that boiler room, I think we did.

Q. Pardon me?

A. In the boiler room, we worked on the same trench.

Q. In the boiler room you worked in the same trench?

A. Yes, a kind of a big, some, yes, we did, in the same trench.

(Testimony of Sam Swatack.)

Q. What was this trench that you speak of in the boiler room? A. For the wall.

Q. For the wall of the boiler room?

A. Yes. [215]

* * * * *

Q. One thing more. You alluded to the fact that at a later time you and he were working on footing ditches for the boiler room. Is that right?

A. Yes.

Q. That was at a later time? A. Yes.

Q. And those footing ditches were for the outside walls of the boiler room, were they not? [222]

A. Outside walls, yes.

Q. Did you do any work on a boiler pit?

A. Yes.

Q. Did you? A. Yes.

Q. Did Kiebertz do any work on the boiler pit?

A. I am not remembering. I think he did.

Q. As a matter of fact, the boiler pits were not dug at that time, were they? Or were not poured—were not dug at that time, were they?

A. Well, there is too many jobs. I cannot remember everything. When I am working hard sometime, I just can't remember the next day what I did. But I do know I worked with him in that place, for walls, I think. I don't know.

Q. I did not understand your statement.

A. I worked on that job with him, but I guess on wall footings, or something.

Q. On the wall footings?

A. Yes. Of course, at that time, it was kind of

(Testimony of Sam Swatack.)

a rough idea, you don't know what you are working on. They tell you to dig someplace, and that is that. [223]

* * * * *

Redirect Examination * * * * *

Q. (By Mr. Croson): Just explain further to us why it was that you did not like to work with Mr. Kieburtz.

A. Because he does not have experience as much, and it seems to me he is too young, he is just a young kid. [234]

* * * * *

Recross Examination

Q. (By Mr. Boyd): You are a member of Local 242, Hod Carriers? A. Yes. [235]

* * * * *

Q. The last question I asked you was this, did you not, while Kieburtz was out there working with you, tell him that you thought that he should not have the right to work there because he didn't belong to the Union?

A. No, I didn't think so.

Q. What was your conversation with him?

A. But he stated about the Taft—what do you call it—Law or something, I didn't know anything about it. I am not a politician, I know nothing about Taft Law, and he says that anybody can work where they please under the Taft Law, and I said, "I don't know. I belong to the Union." And that is all I say, because I know nothing about

(Testimony of Sam Swatack.)

politics. I don't know nothing about the Taft's Law. [236]

* * * * *

E. F. SHUCK, SENIOR

a witness called by and on behalf of the Respondent Employer, having been previously sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Croson): Mr. Shuck, you have been here during the entire hearing? A. Yes.

Q. There has been testimony here about your being present on the job after Mr. Kieburtz came on the job, and I direct your attention to Wednesday, July 29, and ask you if you were on the job that day. A. Yes.

Q. Did you see Mr. Sayler that day?

A. Yes.

Q. This was in the ordinary course, I take it, of your business, and his business?

A. That is right.

Q. Did you observe the men who were at work?

A. Yes.

Q. Did you at that time see Mr. Kieburtz, who is sitting here at the table?

A. Yes, I saw him.

Q. Did you at that time form any opinion as to whether he was [237] suited for this work?

A. I did.

Q. Did you communicate that?

A. I did.

(Testimony of E. F. Shuck, Senior.)

Q. To whom?

A. To Mr. Sayler, the superintendent.

Q. What was that?

* * * * *

A. I shook my head, as customary. I haven't time to discuss the qualities of any man on the job. I shake my head if I am not satisfied.

Q. Did you visit the job site the next day?

A. Yes.

Q. That was routine, was it?

A. That was routine.

Q. Did you again see Mr. Sayler?

A. That day, yes.

Q. Did you see the young man that day?

A. I did.

Q. Did you say anything to Mr. Sayler that day?

A. Mr. Sayler spoke to me about him and I told Mr. Sayler, "Well, let's get rid of him as soon as convenient." [238]

* * * * *

Recross Examination

Q. (By Mr. Boyd): What time of the day was it on Thursday that you told Sayer to get rid of him? A. That was in the afternoon.

Q. And your instruction to Sayler was to get rid of him as soon as he could? A. Yes.

Q. What was Kieburztz doing at this time?

A. As I remember, he was working with the pick and shovel.

Q. Doing what? A. Shoveling dirt. [241]

(Testimony of E. F. Shuck, Senior.)

Q. Where? A. On the premises there.

Q. Where? A. One of the buildings.

Q. Which building?

A. Offhand, now, I can't remember.

Q. What type of work was he doing? You say pick and shovel, but what part of the building?

A. I don't remember offhand right now. You see, I cover many jobs and I have many men more important to me than that kid is. [242]

* * * * *

EUGENE F. SHUCK, JUNIOR

a witness called by and on behalf of the Respondent Union, having been previously sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Jackson): Will you state your name? A. Eugene F. Shuck, Junior.

Q. And you have already testified here previously? A. Yes, sir.

Q. Mr. Shuck, how many years has your firm been engaged in the construction business?

A. Oh, I think Dad started either '33 or '34 in a small way, and we gradually worked up.

Q. During that period of time, how long have you been identified with the construction business?

A. Well, actively, I would say since, it would be '35. I got [249] out of high school in '34. So it would be in the Fall. I started in as a bookkeeper and swamper, a little of everything. [250]

* * * * *

Mr. Jackson: I think that completes the Union's case.

Mr. Boyd: How about the A. G. C.?

Mr. Iversen: I have not witnesses.

Mr. Boyd: I would call Mr. Kieburtz on rebuttal.

RICHARD KIEBURTZ

a witness called in rebuttal by and on behalf of the General Counsel, having been previously sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Boyd): You were present yesterday during the testimony of Mr. Sayler concerning the work which he said he observed you doing on Thursday, when he alluded to your working in a boiler pit excavation? Were you present and heard that testimony? [252] A. I was.

Q. In your testimony yesterday did you then have, at that time, during the time of your testimony yesterday, did you at that time have any recollection of having worked in the boiler pit excavation? A. No.

Q. After hearing the testimony of Mr. Sayler, did that refresh your recollection of having worked in the boiler pit excavation?

A. Excuse me. I think it was Mr. Tucker who said——

Q. (Interrupting) Mr. Tucker. You are right, sir. I stand corrected. Did Mr. Tucker's testimony prompt or refresh your recollection of having worked in the boiler pit excavation? A. No.

(Testimony of Richard Kieburtz.)

Q. Did you since last evening make an inspection of the premises to ascertain the location of the boiler pit excavation? A. I did.

Q. Will you tell the trial examiner where it is?

A. It's there's two boiler pit excavations, about in the middle of the boiler room. And the boiler room is also set in an excavation, about four feet deep, that, the floor of the boiler room, that is, is about four feet below ground level and the floor of the boiler pits are about three feet below that.

Q. My first question of you was, did you ever work in the boiler pit excavation? [253]

A. No.

Q. An excavation three feet wide and 12 feet long? A. No.

Q. Did you ever do any work in relation to the excavation for the footings for the boiler room?

A. Yes.

Q. When, in the course of your three days work was it that you worked, was it that you worked on the boiler room footings excavation?

A. On the first day.

Q. That was your first day's assignment?

A. Yes.

Q. Did Sam also work on the boiler room footings excavation during that first day?

A. He did.

Q. Now, with reference to the boiler room excavation, which side did you work on, which side did Sam work on, during the first day?

A. I worked on the east side and he worked on

(Testimony of Richard Kieburztz.)

the west side. I also worked on the south and he worked on the north.

Q. Do you know of a building there to which he refers to as the gymnasium? A. Yes.

Q. Did you work on footings, excavations for footings on the gymnasium? [254] A. Yes.

Q. On which side of the gymnasium was it that he worked and on which side of the gymnasium was it that you worked, in doing the work in the excavation for the footings?

A. He worked on the east side and I worked on the west side.

Q. That is, as he has testified to here today?

A. That is right.

Q. Your recollection is, is that, is just the change in the date sequence of the work, in relation to his own testimony? A. Yes.

Q. But you did no work on the boiler room pit excavation at all? A. Right.

Q. During the course of Mr. Sayler's testimony, he referred to a situation where he came back and took a board and showed you how to clean out the pier footings. You testified yesterday as to what transpired, but specifically, did he take a board and show you how to scrape the pier footings? A. No.

Q. Immediately prior to the incident of him coming to talk with you about cleaning out the pier footings, did he talk with you about cleaning out the pier footings? A. Yes.

Q. But he did not use a board to show you?

A. No.

(Testimony of Richard Kieburtz.)

Q. What had transpired immediately prior to that?

A. The concrete inspector had come by where I was working on one of the, backfilling around one of the forms for the pier footings, and he took his rule and measured the depth of it and mentioned that it was not deep enough and then he went off to talk to Mr. Sayler.

Q. And it was immediately after that that Mr. Sayler came to you, then, and gave you a measured stick and told you to make sure that they were that deep?

A. Yes. [256]

* * * * *

Mr. Boyd: That is all. The General Counsel rests. [257]

* * * * *

GENERAL COUNSEL'S EXHIBIT No. 2

Labor Agreement

November 3, 1950

1. This Agreement made and entered into, in duplicate, this 3rd day of November, 1950, by and between Associated General Contractors of America, Seattle Chapter, Inc., by and through Seattle Construction Council, affiliate members thereof, acting collectively and severally for all of its members, employers of craftsmen and labor, Party of the First Part, and Seattle Building and Construction Trades Council, Party of the Second Part, acting collectively and severally for all of their members, as follows:

2. Desiring to insure the continuance of the amicable relations now existing between the building trades craftsmen of Seattle and their employers, both parties hereto mutually agree to maintain all wages in the sub-joined wage scale and the working conditions of the Seattle Building Trades Council as set forth in this contract.

* * * * *

4. * * * * *

(g) Paragraph 4 of this agreement shall remain in effect unless notice is given ninety (90) days prior to July 1 of any given year, provided, however, that such notice and any determinations made pursuant thereto shall not affect wages already in effect for the balance of such year. Paragraph 4 of this agreement shall automatically be renewed from year to year thereafter in the absence of such notice, provided that the wages shall be adjusted from time to time as provided for in paragraph 4.

(h) All other conditions of this agreement shall continue in effect from year to year until changed by the mutual agreement of the parties as provided herein.

(i) Proposed changes or modifications of this agreement shall be made by either party giving notice thereof in writing to the other party at least 90 days before July 1st, and such notice shall specify the provisions desired to be changed and shall state the time and place at which negotiations may commence. The other party shall enter into negotiations not later than 30 days from the date of the receipt

of said notice, after party has notified the other in writing of proposed modifications and changes in the agreement. In the event no accord can be reached in the succeeding 60 days arbitration, as provided hereinafter, shall be resorted to.

* * * * *

9. It is further agreed that all members of the Party of the First Part hiring employees will employ none other than members of the Party of the Second Part, as enumerated in Schedule "A" attached hereto entitled "Wage Scale".

(a) The Party of the Second Part agrees that it will require all employers, whether members of the Party of the First Part or not, to meet the conditions of Sections 7, 8 and 9 of this agreement, and further to register and comply with the State Workmen's Compensation Act, the State Business or Occupation Tax Act, the State and Federal Social Security Acts and the State Unemployment Tax Act before the Party of the Second Part will furnish men to such employer. It shall be the responsibility of the Party of the Second Part, to the best of its ability, to enforce a Union condition on all construction within the jurisdiction of said party as defined in Paragraph 3.

(b) It is further agreed that the Second Party will make no separate, other or different labor, wage, rules or conditions or working agreement or agreements with any member of the First Party without the written approval and consent of the First Party.

(c) It is mutually agreed by the parties hereto

that should any member of either party resign from or forfeit, or otherwise lose his membership in the Seattle Construction Council or Seattle Building and Construction Trades Council, the party of which he was a member shall be relieved of all responsibility under this contract as applied to such member after date of resignation or membership forfeiture. The Party of the Second Part agrees to grant no privileges, terms, or conditions of employment more advantageous than those outlined in this agreement to other similar employers within the area covered by this agreement.

(d) In consideration of the terms and covenants of this agreement, the Party of the Second Part agrees that in the event of there being a shortage of men available for work covered by this agreement the Party of the Second Part shall give requirements for men of the members of the Party of the First Part preference over the requirements of contractors and builders who are not members of the Party of the First Part.

* * * * *

11. If any section, subsection, clause, sentence or phrase of this agreement is, for any reason, held to be repugnant to or in conflict with or in violation of the Labor-Management Relations Act of 1947, otherwise known as the Taft-Hartley Labor Act, being 29 U.S.C., 141 et seq., such repugnancy, conflict or violation shall not affect the validity of the remaining portions of this agreement, and all portions thereof not repugnant to or in conflict with or in violation

of said Labor-Management Relations Act of 1947 shall be enforced and abided by as herein written.

In Witness Whereof the parties hereto have hereunto affixed their hands and seals the day and year first hereinabove written.

Seattle Building and Construction Trades
Council

By Wm. L. Kuithe—Ironworkers #86

Clyde Fenn—Roofers #54

R. Buchanan—Bldg. Laborers #242

J. R. Warren—Painters #300, 1105,
#32, #435

W. P. Uhlman—Pile Drivers #2396

A. D. Loreman—Sheet Metal #99

Wm. L. Haivala—Cement Finisher #528

Harry L. Carr—Dist. C of Carpenters

Associated General Contractors of America,
Seattle Chapter, Inc.

By and Through

Seattle Construction Council

By Cliff Mortensen

Geo. E. Teufel

R. B. Lane

Oscar Sundberg

E. B. Hickok

CERTIFICATE

This is to certify that the attached proceedings before the National Labor Relations Board for the 19th Region in the matter of E. F. Shuck Construc-

tion Co., Inc., were had as therein appears, and that this is the original transcript thereof for the files of the Board.

ACME REPORTING COMPANY,
Official Reporters

/s/ By VERNON V. KELLER,
Field Reporter

[Title of Board and Cause.]

TRANSCRIPT OF PROCEEDINGS

Room 407-G, United States Courthouse Building,
Seattle, Washington, Friday, March 4, 1955.

Pursuant to notice, the above-entitled matter came on for hearing at 9:30 o'clock, a.m.

Before: Martin S. Bennett, Esq., Trial Examiner.

Appearances: Melton Boyd, Esq., 407 U. S. Courthouse, Seattle, Washington, appearing on behalf of counsel for General Counsel.

Lyle Iversen, Esq., of the firm of Lycette, Diamond & Sylvester, 800 Hoge Building, Seattle, Washington, [1*] appearing on behalf of the Seattle Chapter of The Associated General Contractors of America and The Seattle Construction Council.

Arthur S. Quigley, Esq., of the firm of Croson, Johnson & Wheelon, 900 Insurance Building, Seattle, Washington, appearing on behalf of the Witness Shuck and the Witness Berg.

Roy E. Jackson, Esq., 1207 American Building, Seattle, Washington, appearing on behalf of Hod

* Page numbers appearing at top of page of original Reporter's Transcript of Record.

Carriers, Building and Common Laborers Union,
Local No. 242, A. F. L. [2]

Proceedings

Trial Examiner: The hearing will be in order.

This is a formal hearing before the National Labor Relations Board in the matter of E. F. Shuck Construction Company, Inc., The Associated General Contractors of America, Seattle Chapter, Inc., The Seattle Construction Council, case 19-CA-851 and 19-CB-261. I believe another respondent in the matter is Hod Carriers, Building and Common Laborers Union, Local No. 242, A. F. L.

This is actually a remand hearing, and I will go into more detail on that in a moment.

The Trial Examiner conducting this hearing is Martin S. Bennett.

I will ask counsel and other representatives for the parties to state their appearances for the record.

Mr. Iversen: My name is Lyle Iversen, of the firm of Lycette, Diamond & Sylvester, and I represent the Seattle Chapter of The Associated General Contractors of America and their affiliate, The Seattle Construction Council.

I would like to state for the record that they are the same thing.

Trial Examiner: Would you give the reporter your address as well?

Mr. Iversen: My address is 800 Hoge Building, Seattle.

Trial Examiner: For the General Counsel. [4]

Mr. Boyd: Melton Boyd, attorney, counsel for

the General Counsel. My address is 407 U. S. Courthouse, Seattle, Washington.

May I make this observation before passing. The gentlemen who are identifying themselves as counsel today are counsel who appeared in the original hearing in this case, which opened before Trial Examiner Wallace E. Royster on October 29 of 1953. There was on that occasion one other gentleman present, Mr. Carl Croson, who was an associate with Mr. Arthur Quigley and who since has passed away.

Trial Examiner: I gather, then, that several other appearances ought to be made.

Mr. Quigley: I am Arthur S. Quigley, improperly shown in the record as Arthur G. Quigley, a partner of Croson, Johnson & Wheelon, representing the witness Shuck and the witness Berg at this hearing. I have questioned, there being no appeal, that I am appearing for the Shuck Company at this hearing.

Mr. Boyd: Do I understand—may I take up the inquiry?

Trial Examiner: Yes.

Mr. Boyd (continuing): —do I understand the Shuck Construction Company does not wish to make an appearance as a respondent in this re-opened hearing? As I see it, there is no prejudice to your taking one position or the other, but so our record will be clear and we will understand what you want to do I have framed the question to which you could make a response and perhaps clarify your position.

Mr. Quigley: What is your position to be, Mr. Jackson?

Mr. Jackson: Well, I would take the position that we appear here as representing the respondent. I would take that position.

Trial Examiner: Perhaps we had better have your appearance for the record.

Mr. Jackson: Roy E. Jackson, 1207 American Building, appearing in behalf of Hod Carriers, Building and Common Laborers Union, Local No. 242, A. F. L.

Mr. Boyd: For the information of the Trial Examiner, since we have this much on the record, let me fill in some information that is shown on the original record in this case.

Originally, Mr. Quigley, along with Mr. Croson, appeared as counsel for the Shuck Construction Company, a respondent in the proceeding, and originally Mr. Jackson appeared for the Common Laborers Local, which was a respondent in the proceeding originally conducted before Trial Examiner Royster in 1953.

Trial Examiner: I have before me the order remanding the proceeding for further hearing, and the only issue before us at this time, as stated by the Board in its order remanding the proceeding—said order being dated February 9, 1955—is that “a further hearing be held before a Trial Examiner for the purpose of obtaining additional commerce data.”

Just so there will be no doubt about it, that is the only issue before us at this time, as I see it. [6]

* * * * *

Trial Examiner: While we are talking about that I might note for the record one minor inaccuracy in

the order. At least I am advised it is an inaccuracy. The order states that respondent union, namely, the Hod Carriers Local, filed exceptions on February 5, 1954, to the original intermediate report. I am advised that the exceptions were filed only by the A. G. C.

Mr. Boyd: And The Seattle Construction Council.

Trial Examiner: And The Seattle Construction Council, rather than respondent union. I don't think that will affect the matter here before me at all, however. [8]

* * * * *

Trial Examiner: Let's put the other transcript and record aside for a moment.

As I see the issues before me at the moment, it is the burden of counsel to establish that the operations of these respondents falls within the Board's jurisdictional policies. That is the issue with which the respondents are being confronted here today, and there isn't any other one.

Mr. Boyd: In the original hearing documents put in evidence were numbered from 1 through 5, inclusive, being General Counsel's Exhibits 1 through 5, inclusive. Further exhibits to be offered today by the General Counsel will relate to that number.

General Counsel's Exhibit No. 1 was the original formal file containing the formal papers upon which the issues in the case were made.

At this time I wish to present in this record as a supplement to General Counsel's Exhibit No. 1 that which will be marked No. 1 Part 2.

Trial Examiner: What do you mean? What is Part 1 and Part 2?

Mr. Boyd: And composed of the following documents: [11]

The Board's order remanding proceeding to Regional Director for further hearing, dated February 9, 1955; the order and notice of further hearing, issued by the Regional Director on February 21, 1955; and the affidavit of service of order and notice of further hearing, showing service of these documents upon each of the respondents, with courtesy copies to their counsel, being an affidavit dated February 21, 1955, to which is attached the registry return receipts showing service by registered mail.

(Thereupon the documents above referred to were marked General Counsel's Exhibit No. 1 Part 2 for identification.)

Mr. Boyd: I offer in evidence that which is now marked for identification General Counsel's Exhibit 1 Part 2.

Mr. Iversen: I wish to register for the record the fact that the error that has previously been referred to appears in the order of February 9, 1955, namely, the recital that the exceptions were filed by the union whereas they were filed by The Associated General Contractors.

Trial Examiner: I believe we are all in agreement on that.

Mr. Boyd: Yes. The Trial Examiner, as I understand it, has already remarked on this record that that was an error and the Board's order should have recited that the exceptions were filed not by the re-

spondent union but by the respondent A.G.C. and Seattle Construction Trades Council. [12]

* * * * *

Trial Examiner: That is right, I am not foreclosing anyone from filing exceptions to my intermediate report.

I think all parties have the right to file exceptions to my supplemental intermediate report which will treat with the commerce question. I don't think that the substantive unfair labor practices are open for the filing of exceptions at this time. If the parties feel that they are, I suggest that they do so. I just don't think they are in standing to do it, and it may be that the Board will agree with them.

I am going to modify my prior ruling to that extent. I am not foreclosing any counsel from filing additional exceptions at this time to the substantive unfair labor practices. I don't think they have standing to do so, but if they feel that they have that right I am not foreclosing them. At such time as they file exceptions to my supplemental intermediate report I suggest that they protect themselves by doing accordingly. This is not to be construed as an authorization for them to do so.

As I view it, the only thing that is open after I comply with the Board's remand order is the parties, if they feel [16] aggrieved, file exceptions to such subject matter as my supplemental intermediate report may treat with.

All right, will you proceed, Mr. Boyd.

Mr. Boyd: Mr. Harper.

Trial Examiner: I didn't rule on the receipt in

evidence of General Counsel's Exhibit No. 1 part 2.

Is there any objection to the receipt of the three documents?

Mr. Iversen: No objection with the corrections recited.

Trial Examiner: I will receive the proffered documents. [17]

COLTON D. HARPER

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Boyd): Mr. Harper, your name is Colton D. Harper? A. Yes.

Q. You are the same Colton D. Harper who was called to testify in the original hearing in this case, which was conducted [17] on October 29 of 1953?

A. Yes.

* * * * *

Q. (By Mr. Boyd): What is your address?

A. 215 West Harrison Street.

Q. That is your business address? A. Yes.

Q. For whom do you work?

A. The Associated General Contractors of America, Seattle Chapter, Inc., and The Seattle Construction Council.

Q. And what is your position with the A. G. C.?

A. Assistant manager.

Q. The A. G. C. has a division of its functions

(Testimony of Colton D. Harper.)

which is known as The Seattle Construction Council? A. Yes.

Trial Examiner: Just what is that division?

The Witness: That is composed of material for houses, subcontracting firms, and generally supply.

Q. (By Mr. Boyd): They are your specialty contractors? [18]

A. Correct.

Q. In distinction to your general contractors, is that correct? A. Yes.

Trial Examiner: They all belong to the Seattle Chapter but the houses which fall into that group are put into The Seattle Construction Council, is that correct?

The Witness: Yes.

Q. (By Mr. Boyd): I hand you that which will be marked for identification General Counsel's Exhibit No. 6.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 6 for identification.)

Q. (By Mr. Boyd): Do you recognize what that is? A. Yes.

Q. Directing your attention to the list of the officials and the list of names as they appear at pages 28, 29, 30, and 31, would you say that that is the roster of the membership of the Seattle Chapter of The Associated General Contractors of America, being the members that are engaged in general construction, heavy construction, and highway construction?

(Testimony of Colton D. Harper.)

A. All with the exception of—no; it would be highway construction if you consider bridges.

Mr. Boyd: Will you read the answer.

(Answer read.)

A. I should have said it would include highway construction. [19]

Q. You have a way of designating after the name of each member the class of construction work in which they are engaged, with symbols "B", "B-Hvy" and "B-H-Hvy"? A. Yes.

Q. "B" stands for building construction?

A. Yes.

Q. "B-Hvy" stands for highway construction, does it not? A. Yes.

Q. And the "B-H-Hvy" abbreviates heavy construction, does it not? A. Yes.

Q. Would you state what is the differentiation between the building, highway, and heavy classifications of your membership?

A. Those who engage in building construction are the contractors who build structures to house persons or equipment or whatever it may be, and on highway construction, as it is used here, the letter "h" does include bridges. It does include bridges. Although I don't believe we have a highway constructor as such in the organization who would do paving or grading of a highway. And the heavy construction has to do with such as tunnels, docks, wharves, and the more heavier type of construction. That is the term as we define it.

Q. Very well. Now directing your attention fur-

(Testimony of Colton D. Harper.)

ther to the list of names of members as they appear, beginning at pages 32, [20] continuing, 33, 34, 35, 36, 37, and through to page 51, in this General Counsel's Exhibit 6, does that list there the members of your organization who are identified with the subdivision of your organization known as The Seattle Construction Council? A. Yes.

Mr. Boyd: I would offer in evidence General Counsel's Exhibit 6.

Mr. Iversen: No objection.

Trial Examiner: It may be received.

(The document heretofore marked General Counsel's Exhibit No. 6 for identification was received in evidence.)

[See page 249.]

Q. (By Mr. Boyd): Included within the membership of the Seattle Chapter of A. G. C. and identified as a member engaged in building construction work you have the firm of E. F. Shuck Construction Company? A. Yes.

Q. Which is the other respondent in this proceeding.

Mr. Harper, in a round figure, which is approximately correct, however, what is the total dollar volume of construction work performed annually or that was performed in the year of 1953 by all members——

Mr. Iversen: I object to the question.

Q. (By Mr. Boyd—continuing): of the Seattle Chapter of The Associated General Contractors of America? [21]

(Testimony of Colton D. Harper.)

* * * * *

A. I do not know.

Q. (By Mr. Boyd): Well, can you state, with dependable information, that it did exceed one hundred million dollars in 1953?

A. No, I couldn't. [22]

Q. What was the basis of your giving that information, then, to field examiner McFeely last week?

A. That it exceeded one hundred million dollars?

Mr. Iversen: I object to counsel cross-examining his own witness.

Mr. Boyd: I would state the witness is called under Rule 43 (b) as managing agent of respondent.

Trial Examiner: All right, I will go along with you on that.

You are being asked in effect if you gave a statement to that effect to a board field examiner last week.

A. Oh, I told him, to the best of my knowledge and my memory, that I would presume so. I didn't give him a definite statement. I have no way of determining that.

Trial Examiner: Do you still presume so?

The Witness: Yes, I would presume so, that it would exceed one hundred million dollars. [23]

* * * * *

Q. (By Mr. Boyd): Mr. Harper, does your Seattle Chapter of A. G. C. or did it in 1953 pursue

(Testimony of Colton D. Harper.)

the practice of notifying its members of contracts to be let in the construction field in the State of Washington and also in the Territory of Alaska?

A. Yes.

Q. You did that systematically? A. Yes.

Q. Did you provide your members with follow-up information as to the contracts that were let?

A. Yes.

Q. Both in the State of Washington and nearby adjoining states and also in the Territory of Alaska?

A. Yes.

Q. Did you systematically inform your members as to which of those contracts were let to members of the Seattle Chapter of the A. G. C.?

A. Would you restate the question, please?

(Question read.)

A. Yes.

Q. Now, based upon that information, which you were systematically assembling and putting out to your membership, taking [24] notice of the dollar volume of contracts being let to members of the Seattle Chapter of the A. G. C., would you state whether the dollar volume of construction work performed by members of the Seattle Chapter of the A.G.C. during the year of 1953 approximated one hundred million dollars? * * * * *

A. Based on these records that we—the systematic reporting that you are speaking of, we do the systematic reporting, but we do not keep a total of dollar volume, and I couldn't, I just couldn't, say.

(Testimony of Colton D. Harper.)

I just thought of something that was part of the basis of my statement to Mr. McFeely. I did happen to think of one job that was a forty million dollar job that one contractor had.

Q. (By Mr. Boyd): In that particular year?

A. Which I can readily see would have in that particular year made the one hundred million dollars.

Trial Examiner: Where was that job?

The Witness: That was in Ketchikan, Alaska.

* * * * *

Trial Examiner: I will deny the motion.

You said this forty million dollar job was in 1953?

The Witness: Yes.

Trial Examiner: And that was performed by one of the members of the A.G.C.?

The Witness: Yes.

Trial Examiner: Which company was that?

The Witness: Howard S. Wright.

Q. (By Mr. Boyd): And you said further that the job that was [26] accomplished was performed in Ketchikan, Alaska? A. Yes.

Q. That brings a second point up. Is a substantial part, was a substantial part, of the total work done in the year of 1953 by members of the A.G.C. done in states and territories of the United States outside the State of Washington?

* * * * *

Q. (By Mr. Boyd): Understanding I mean the Seattle Chapter of the A.G.C.

(Testimony of Colton D. Harper.)

A. I would say that a substantial portion and perhaps 50 per [27] cent of our members definitely was.

Q. Were performing work outside the State of Washington? A. Yes.

Q. In states other than Washington or in the Territory of Alaska? A. Yes.

* * * * *

Q. (By Mr. Boyd): And the further point, to restate the question, was a substantial portion of this total work done by, construction work done by, members of your Seattle Chapter done under direct contract with the United States Government in the construction of defense facilities?

A. Yes.

Q. Both within the State of Washington and also in nearby states and in the Territory of Alaska?

A. Yes. [28]

* * * * *

Q. (By Mr. Boyd): May I ask you, then, Mr. Harper, approximately what percentage of the gross amount of work that was done in 1953 which was done by your members was work accomplished outside the State of Washington?

A. That is a very difficult question. I don't even know how to go about arriving at that. I don't have a criteria of any kind to determine that.

Trial Examiner: I thought he said that 50 per cent of their work was done outside of the state.

Mr. Boyd: He said 50 per cent of the membership did work outside the State of Washington,

(Testimony of Colton D. Harper.)

but the dollar volume wouldn't be reflected by that.

Q. (By Mr. Boyd): Would you say that at least 10 per cent of the gross amount of work done in 1953 was done by your members outside the State of Washington, being in nearby adjoining states or in the Territory of Alaska? [29]

* * * * *

A. Yes.

Q. (By Mr. Boyd): At least 10 per cent of it would be done outside the State of Washington?

A. Yes.

Q. Which would mean at least ten million dollars would have been done in '53 outside the State of Washington? In fact, there is one item of forty million dollars was done in the Territory of Alaska?

A. Yes.

Mr. Boyd: Which he recited.

Trial Examiner: If you had a forty million dollar item in Alaska at that year and the work outside of the state was approximately 10 per cent of the total, wouldn't the annual volume of all the contractors be at least four hundred million?

Q. (By Mr. Boyd): Are you in a position to state?

A. I would say no, because forty million dollar jobs don't come up every day. Those are exceptions.

Trial Examiner: We are talking about 1953 now.

The Witness: Even in 1953 because that was decidedly——

(Testimony of Colton D. Harper.)

Q. (By Mr. Boyd — interrupting): Normally you would say, year in and year out you would say, that at least 10 er cent of the work of your membership is done outside the State of Washington?

A. Yes.

Q. Would you say normally year in and year out the dollar volume of work done by your members would exceed a hundred million dollars?

Mr. Iversen: The same objection.

Q. (By Mr. Boyd): In its entirety, both within the State of Washington and outside the state?

* * * * *

A. Yes.

* * * * *

Q. (By Mr. Boyd): With respect to construction work [31] accomplished in 1953 within the State of Washington and by members of your Seattle Chapter, excluding for the moment Shuck Construction Company, was work done by individual members in that year done for the United States Government under direct contract with the government?

A. Yes.

Q. You had supplied Mr. McFeely with certain items of 1953, which I would read and have you state whether it is your recollection that this work was accomplished within 1953 by your members and within the State of Washington.

* * * * *

Q. (By Mr. Boyd): The construction of powder magazines at Bangor, Washington, for the United States Navy, in the dollar amount of a

(Testimony of Colton D. Harper.)

million three hundred ninety-seven thousand dollars. A. Yes.

Q. And the construction of a boat storage plant for the United States Navy in the amount of \$1,-321,000. A. Yes.

Trial Examiner: This is construction by unidentified members of the Seattle Chapter of the A.G.C.?

Mr. Boyd: This is construction by unidentified members of the Seattle Chapter of the A.G.C. but not Shuck.

Trial Examiner: Unidentified members of the Seattle Chapter of the A.G.C. but not Shuck? [32]

Mr. Boyd: That is right.

Trial Examiner: All right.

Q. (By Mr. Boyd): The construction of radio transmitter for the United States Navy at the cost of \$13,000? A. Yes.

Q. The construction of ammunition and storage area at Fort Lewis for the United States Army in the amount of \$57,000? A. Yes.

Q. Construction of transmitter facilities at Richland, Washington, for the Atomic Energy Commission in the amount of \$473,000?

A. Yes.

Q. And the construction of Phase Two of the transmitter facilities at Richland, Washington, for the Atomic Energy Commission in the amount of \$1,278,000? A. Yes.

Q. In addition to that and apart from those figures and still excluding from your testimony any reference to Shuck, did members of the Seattle

(Testimony of Colton D. Harper.)

Chapter perform construction work valued in excess of \$200,000 in the year of 1953 for freight transportation companies such as the Northern Pacific Railroad and the Seattle-Los Angeles Motor Freight Express, Inc.?

* * * * *

A. Yes. [33]

Q. (By Mr. Boyd): And in addition was construction work in excess of \$200,000 done by members of the Seattle Chapter of A.G.C. in 1953 for the Pacific Telephone and Telegraph Company, specifically the building constructed by Howard Wright, at a construction cost of two million dollars?

A. Yes.

Q. Pacific Telephone and Telegraph Company is the public utility company providing telephone service in the Pacific Northwest and beyond the State of Washington, is it not?

* * * * *

A. Yes.

Q. (By Mr. Boyd): In addition to that, did some one of your members in 1953, specifically General Construction Company, construct a terminal facility known as Pier 1 for the Port of Everett at a cost of approximately \$382,000?

* * * * *

A. Yes. [34]

* * * * *

Q. (By Mr. Boyd): This Port of Everett, to which we just made reference in the testimony, is a public sea port operated on the water front in

(Testimony of Colton D. Harper.)

the City of Everett and on the Puget Sound, is it not? A. Yes.

Q. And this terminal facility that was being constructed at the time was a part of the trans-shipment facilities of that public port? A. Yes.

Q. Could you state dependably, too, Mr. Harper, that in the year of 1953 employer members of the Seattle Chapter engaged in other construction work valued in excess of \$200,000 performed for individual firms which themselves manufacture goods that are sold and delivered to destinations outside the State of Washington in excess of \$50,000 annually? A. Yes. [35]

* * * * *

Cross Examination

Q. (By Mr. Iversen): Mr. Harper, what type of organization with respect to whether it is a corporation or association or what it is is the Seattle Chapter of A.G.C.?

A. The primary functions of the Seattle Chapter—

Q. (Interrupting) No. I am asking you what kind of organization it is, with respect to whether it is a partnership, corporation—

A. (Interrupting) Oh, I see. I beg your pardon. It is a corporation. [36]

* * * * *

Trial Examiner: Is it a correct statement to say, and correct me if I am in error, that the prime purpose of the A.G.C. and its divisions in

(Testimony of Colton D. Harper.)

Seattle is to represent its members and to look after the interests of its members?

The Witness: Yes. [37]

* * * * *

Q. (By Mr. Iversen): How does one cease to become a member of the Seattle Chapter of A.G.C.?

A. By filing a letter of resignation which again is taken before the Board and approved.

Q. Do you have a changing membership, people coming in and people going out? A. Yes. [38]

* * * * *

Q. In the year that we have under consideration, 1953, was E. F. Shuck Construction Company, Inc., a member of your chapter? I am talking now about E. F. Shuck Construction Company, Inc.

A. I believe E. F. Shuck was a member as E. F. Shuck at that time.

Trial Examiner: He was a member of what, now?

The Witness: Of The Associated General Contractors, Seattle Chapter.

Trial Examiner: In 1953?

The Witness: In 1953. [39]

* * * * *

Trial Examiner: Are you contending that the E. F. Shuck Company was not a member of the A.G.C.?

The Witness: No, I am not contending that at all. The only contention I have is that Mr. Shuck is carried on our membership rolls as E. F. Shuck.

(Testimony of Colton D. Harper.)

Q. (By Mr. Iversen): As an individual, is that right?

Trial Examiner: How do the membership rolls carry them, as a company or a corporation or what?

The Witness: No; they carry it as E. F. Shuck.

Q. (By Mr. Iversen): Are your membership rolls carried the same way as the roster shows?

A. Yes. [40]

* * * * *

Q. Did the Seattle Chapter, A.G.C., act as a hiring agent for any of the persons who worked on the job in question? A. No.

Q. Did the Seattle Chapter, A.G.C., have any contractual relations whatsoever with any persons who worked on that job? [43]

* * * * *

Q. (By Mr. Iversen): Take it first from any individual employees.

A. No, not as such.

Q. Did you have any contractual relations with the employer [44] on that job? A. No.

Trial Examiner: Did you bargain in behalf of that employer?

The Witness: Yes.

Trial Examiner: And that is the association-wide contract?

The Witness: Yes.

Q. (By Mr. Boyd): When you say you had no contractual relations with the employer, I think you may misspeak yourself. In so far as contractual relations of the employer involved, you had relations to the extent of membership, did you not?

(Testimony of Colton D. Harper.)

A. Yes.

Q. As to contractual relation as to membership, you had no other contractual relationship with the employer on the job, did you?

A. That is correct. [45]

* * * * *

TOR BERG

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Boyd): Your name is Mr. Tor Berg?

A. Tor Berg, that is right.

Q. By whom are you employed?

A. By the E. F. Shuck Construction Company.

Q. And in what capacity?

A. I am the accountant for the firm. [47]

* * * * *

Q. (By Mr. Boyd): Mr. Berg, in gross amount is it [48] approximately correct to state that the Shuck Construction Company's construction work performed in the year of 1952 approximated \$872,000?

A. That's correct, yes.

Q. And in the year of 1953 it approximated \$879,000?

A. That's correct.

Q. Now, within the year of 1952 and as a part of that gross amount in that year did the Shuck Construction Company perform construction work for the Port of Seattle in the construction of its

(Testimony of Tor Berg.)

transient shed No. 6 at Pier 20 at a cost of about \$92,679.76?

* * * * *

Q. (By Mr. Boyd): Now, in the year of 1953.

A. To my knowledge the company built this transient shed in 1952.

Trial Examiner: For the indicated price?

The Witness: Yes. [49]

Q. (By Mr. Boyd): And in the year of 1953 did the same company build for the same Port of Seattle or rather perform alteration work on building, I believe, C-9, at the Salmon Bay terminal at a cost of \$13,363.21?

A. That is correct, yes. [50]

* * * * *

Q. (By Mr. Boyd): Mr. Berg, with reference to other construction work done by the company in 1952 and 1953, in 1952 did not the Shuck Company perform construction work at a cost of about \$10,453.53 for the Los Angeles-Seattle Motor Express, Inc.?

A. That's correct. [52]

* * * * *

Mr. Boyd: Can it be stipulated that the Los Angeles-Seattle Motor Express, Inc., is the name of a company that operates motor freight lines between the states of Washington and California? [56]

* * * * *

Mr. Jackson: It would appear to me we should be able to stipulate as to Los Angeles-Seattle Motor Express. We are dealing with that every day. We

(Testimony of Tor Berg.)

appreciate it operates back and forth. I don't see any necessity of carrying out a long dissertation on a question of that kind.

Mr. Quigley: If other counsel have any personal knowledge of any of these, I will go along.

Mr. Jackson: I think we will agree to that, as to Los Angeles-Seattle Motor Express.

Mr. Iversen: I will say I won't object to it; I will assume that it is correct.

Mr. Jackson: With the reservation that it is immaterial.

Mr. Iversen: Yes.

* * * * *

Q. (By Mr. Boyd): Mr. Berg, in the year of 1952 did Shuck [57] Company additionally complete construction work at a cost of \$12,437.20 for the Department of Lighting for the City of Seattle, a local public utility company?

A. That is correct, yes.

Q. And in the year of '52 did it additionally complete work for various firms, and I specify Sears, Roebuck & Company, Joseph T. Ryerson & Son, Inc., Monsanto Chemical Company, and J. C. Penney Company, the amounts being done for them as follows:

For Sears, Roebuck, one job \$7,751.94, another job \$1,028.49, another job \$1,087.75, another job \$2,233.39;

For Joseph T. Ryerson & Son, one job \$2,932.85, another job \$234.26, another job \$2,957.15——

* * * * *

(Testimony of Tor Berg.)

Q. (By Mr. Boyd—continuing): —and still a further job for Ryerson in the amount of \$1,566.74, and for Monsanto Chemical Company a series of jobs, one of which was \$125.71, another one \$49.85, another one \$46,922.91, another one \$967.17, and another one \$193.60, and for the Equitable Life Assurance Society in the amount of, one job in the amount of, \$10,433.90, another one in the amount of \$3,924.89; those being construction items performed in 1952 for the companies named? [58]

A. Can I answer it this way, that if those figures that you read to me are the same as those that Mr. McFeely copied off of this list or the job cost ledger, if they are, then that is correct.

Q. These figures which I have been reading are the figures taken off your own records by Mr. McFeely and in your own presence?

A. Yes. [59]

* * * * *

Q. (By Mr. Boyd): Excluding the figure that I gave you of Equitable Life Assurance Society of \$10,433.90, for which you did not find a corresponding figure on your record, were all the remaining figures which I gave you figures which show up on your records of work done in 1952 by Shuck for those companies as indicated?

A. That's right, yes. And I may say that they include Washington State sales tax, if it matters. I mean those figures include the three per cent sales tax, if it means or makes a difference.

(Testimony of Tor Berg.)

Trial Examiner: You are just striking the reference to the Equitable job?

Mr. Boyd: The reference to that one Equitable job, which was given as \$10,433.90. I do not find a corresponding figure for and move that that be stricken from the question put to the witness. [60]

* * * * *

Q. (By Mr. Boyd): With reference to the year of 1953 you stated at the outset of your testimony that the gross amount of construction work of the Shuck Company was around \$879,000?

A. That is correct.

Q. Within that period of 1953 you previously testified that there was \$13,363 worth of work done for the Port of Seattle at the Salmon Bay terminal?

A. Yes.

Q. With reference to other work done in the year of 1953 do you have a record showing the work done under contract directly with the United States Government for the construction of defense installations, specifically the United States Navy, in the alteration of its building at Pier 91, the United States Veterans Administration Hospital, and also for the General Services Administration for work done in the Federal Office Building? A. Yes.

Q. Will you refer to your records in respect to those three items? [61]

A. The first one, though, four hundred fifty-eight twenty-nine, is only a small part of the total job. This (indicating) is the part that was completed in

(Testimony of Tor Berg.)

December of '53, and the remainder of the contract was completed in '54.

Q. You are speaking of \$458 worth in 1953 for alterations to buildings at U. S. Navy Pier 91?

A. Yes.

Trial Examiner: How much was the entire contract?

The Witness: It was eleven thousand nine hundred ten or thereabouts.

Trial Examiner: The remainder was done in 1954?

The Witness: It was started in the middle of December 1953.

Q. (By Mr. Boyd): With reference to the United States Veterans Administration Hospital you did in 1953, seventeen thousand——

A. (Interrupting): That was a lump sum contract.

Q. In addition to that you did this additional work for the General Services Administration Federal Office Building in the sum of \$1,846 in 1953?

A. Correct.

Q. Some few items I would have you check with reference to work done in 1953, for other firms whose names I shall supply you, was work done for General Electric Company in 1953?

A. That's right, yes. [62]

Q. You have reference there to work accomplished under contract in the total amount of approximately \$13,477.90? I don't have the job number.

(Testimony of Tor Berg.)

A. Let me see now; I can't remember the job number now either.

Q. Is that figure approximately correct?

A. Yes, we might say that.

Q. Did you do in 1953 a number of small jobs for the Monsanto Chemical Company that would have approximated about at least \$10,000 in work—oh, no, that overstates it—approximated \$5,000 in work?

A. Based on this summary here (indicating)——

Trial Examiner: No, I don't want you to rely on the summary; I want you to rely on your own familiarity of the records or inspection of the records.

A. Without looking up each individual job I can say that they probably did around \$5,000 for Monsanto. [63]

* * * * *

Cross Examination * * * * *

Q. (By Mr. Iversen): Did you have some jobs conducted by the Shuck Construction [66] Company, Inc., and some conducted by Mr. Shuck as an individual?

A. To my knowledge the corporation performed the jobs after the company was incorporated.

Q. Were there any of these jobs that you referred to performed by Mr. Shuck as an individual?

A. Not to my knowledge.

Q. Do you know whether or not they were?

Trial Examiner: Let me see if I follow you correctly. Does Mr. Shuck engage in the construction business in two forms?

The Witness: No. He was operating as an indi-

(Testimony of Tor Berg.)

vidual until June 30 of '49, and then the company was incorporated.

Trial Examiner: Subsequent to its incorporation in 1949 has Mr. Shuck engaged in construction business so far as you know only in the corporate form?

The Witness: That is correct.

* * * * *

Redirect Examination

Q. (By Mr. Boyd): The particular job on which Kieburztz was employed, which was the Mercer Island School job, in 1953, was begun, was it not, and concluded in 1954?

A. Yes, it began in 1953 and was concluded in '54.

Q. With respect to the dollar volume of the work done on that job in 1953—with respect to the entire job, the entire contract [67] cost of that job, done in '53 and '54, was approximately \$211,000, was it not?

A. The total amount of the contract was around two hundred eleven thousand, yes.

Q. And the part done in 1953 was approximately \$124,000?

A. If those figures are what I gave Mr. McFeely, then that is correct.

Q. Those are the figures you gave Mr. McFeely.

A. I have no way to answer other than saying that.

Q. Would you say that was approximately correct? A. Yes.

* * * * *

(Testimony of Tor Berg.)

Recross Examination

Q. (By Mr. Iversen): Mr. Berg, that school job was for a local school district, was it not?

Mr. Boyd: I will stipulate it was for the Mercer Island [68] School District, a public school district in the State of Washington.

Does that answer your question?

Q. (By Mr. Iversen): And it was located in the State of Washington? A. Correct.

* * * * *

Trial Examiner: I would like to ask Mr. Harper a question or two.

COLTON D. HARPER

a witness called by and on behalf of General Counsel, after having been previously sworn, was examined and testified further as follows:

Trial Examiner: Did you say how long you had been with A. G. C. here in Seattle? [69]

The Witness: No. I started October 1, 1950.

Trial Examiner: As I understood an answer you gave this morning, I believe in reply to a question of mine, Seattle Chapter of the A. G. C. engages in collective bargaining and signs contracts for all its members, is that correct?

The Witness: Correct, yes.

Trial Examiner: Has that been true since you have been employed by them?

The Witness: Yes.

Trial Examiner: Does that specifically include Shuck Construction Company?

(Testimony of Colton D. Harper.)

The Witness: Yes, I would say in their behalf.

Mr. Iversen: I wonder if the witness understood that question. I think there was a sleeper in that question.

Trial Examiner: I didn't intend it.

Mr. Iversen: Because the question assumed that that was Shuck Construction Company. I assume that you mean by that incorporated.

Trial Examiner: The corporation, yes.

Let's clarify that, whether it included the corporation or otherwise.

Mr. Iversen: I think the question also indicated that was a member and I think that had better be cleared up so the witness understands what he is talking about.

The Witness: Our negotiations are carried on in behalf [70] of the members of the Association, and in this case I would say that we were negotiating on behalf of E. F. Shuck, since we do not have E. F. Shuck Construction Company, Inc., as a member. Let me clarify that a little further. We have construction companies who are constantly incorporating or dissolving or forming partnerships or joint ventures, and they in turn request that these different names be allowed as a member. These requests are by letter, and they do require Board action, and they are in our minutes. In fact, we had two at our last meeting.

Trial Examiner: What is the current status of Shuck so far as you know?

The Witness: So far as I know now, I would

(Testimony of Colton D. Harper.)

have to check my records to be sure of this, so far as I know he is a member as E. F. Shuck, and I don't believe there has ever been this procedural business of changing the name.

Trial Examiner: Perhaps the questions I want to ask, then, should be asked of Mr. Shuck or Mr. Berg. I would like to suspend with this witness temporarily and call back Mr. Berg.

(Witness excused.)

TOR BERG

a witness called by and on behalf of General Counsel, after having been previously sworn, was examined and testified further as follows: [71]

* * * * *

Q. (By Mr. Boyd): As a matter of fact, who is it who pays the membership dues into the membership chapter of A. G. C. on a current basis? I mean the Seattle Chapter of A. G. C.

* * * * *

A. The dues are paid with checks issued by the corporation, that is, corporation checks.

Q. (By Mr. Boyd): How long has that been true?

A. It has been true as long as I have been there.

Trial Examiner: And you have been there since when?

The Witness: Since approximately August 9 of 1952.

Trial Examiner: And these are the dues paid to

(Testimony of Tor Berg.)

the Seattle Chapter of the A. G. C. by Shuck Construction Company? [73]

The Witness: That is right.

Trial Examiner: So far as you know, does Mr. Shuck as an individual pay dues to the Seattle Chapter of the A. G. C.?

The Witness: I do not know whether he does on his own behalf or anything, personal checks or anything like that, but I do know that the dues payments on the gross business has been paid with checks by the corporation.

Trial Examiner: Let me ask you this—I think you have answered this before, but you can straighten me out quickly enough—do you carry on any operations at the Shuck Company in the name of Mr. Shuck as an individual, construction, or otherwise?

The Witness: You mean any——

Trial Examiner: Any construction operation.

The Witness: No; no.

Trial Examiner: So far as you know, is he engaged in any individual business enterprise?

Mr. Boyd: In the construction field.

The Witness: No. [74]

* * * * *

COLTON D. HARPER

a witness called by and on behalf of General Counsel, after having been previously sworn, was examined and testified further as follows:

Redirect Examination

Q. (By Mr. Boyd): Mr. Harper, so that you will not be [76] mis-speaking yourself and in order that it may be of some assistance to you, will you look at your current roster of membership of the A. G. C. As a matter of fact, currently you do carry Shuck in the name of E. F. Shuck Construction Company, isn't that correct?

* * * * *

A. Yes.

Q. (By Mr. Boyd): Do you recall the circumstances under which the membership with respect to Shuck was transferred from E. F. Shuck to E. F. Shuck Construction Company, Inc.?

A. No, I do not recall the circumstances. However, I do believe that had it have been done by the procedure that we have established that I would recall it. [77]

* * * * *

E. F. SHUCK, SR.

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Boyd): You are Mr. E. F. Shuck, Sr.?
A. Yes, sir.

(Testimony of E. F. Shuck, Sr.)

Q. And you were called originally as a witness in this proceeding in 1953 but gave very brief testimony? A. Yes.

Q. Mr. Shuck, previous to 1949 was your business incorporated? [79] A. No.

Q. And you did incorporate it in the year of 1949?

A. I believe that date is right.

Q. And from that time on was all the construction business in which you were interested carried on in the name of E. F. Shuck Construction Company? A. That is right.

Trial Examiner: It was the same business continued on in the same manner except that you incorporated in 1949, is that correct?

* * * * *

What I am interested in knowing is this, you have carried on the same business operation irrespective of the fact that you incorporated, is that right?

The Witness: That is true, yes.

Trial Examiner: At the same business location?

The Witness: That is true.

Trial Examiner: The same personnel substantially? [80]

The Witness: Well, of course, substantially, but the personnel——

Trial Examiner: I mean—the actual laborers and craftsmen do change—outside of that is it substantially the same personnel?

The Witness: No, I wouldn't say the same per-

(Testimony of E. F. Shuck, Sr.)

sonnel from then except my son and myself; the other have been changed.

Trial Examiner: Did you carry on the same type of construction after '49 as you did prior to '49?

The Witness: That is right.

Trial Examiner: Next question.

Q. (By Mr. Boyd): Now, Mr. Shuck, you did at one time take membership in the Seattle Chapter of The Associated General Contractors?

A. That's right.

Q. When did you first take membership in it?

A. I do not know.

Q. It was prior to the incorporation of your business? A. I do not know.

Q. It was prior to the——

A. (Interrupting) I cannot answer.

Trial Examiner: You don't know whether it was before or after 1949?

The Witness: I will have to look up records on that. The records will substantiate. [81]

Q. (By Mr. Boyd): At the present time in what name is membership in the association carried?

* * * * *

A. Well, the exact name, I cannot give you that.

* * * * *

Trial Examiner: Are you engaged in the construction business in your own name as an individual?

(Testimony of E. F. Shuck, Sr.)

The Witness: No.

Trial Examiner: When was the last time, if ever, you were [82] so engaged in the construction business as an individual?

The Witness: Prior to incorporation.

Trial Examiner: Next question. I have another question.

Do you pay annual dues to the Seattle Chapter of A. G. C.?

The Witness: No.

Trial Examiner: Does your company do it?

The Witness: Yes.

Trial Examiner: How are those checks signed?

The Witness: By my son mostly.

Trial Examiner: On a corporation check or otherwise?

The Witness: Corporation check.

Trial Examiner: Have you ever submitted dues to the Seattle Chapter of A.G.C. on an individual or personal check?

The Witness: I do not know.

Trial Examiner: Do you customarily pay obligations of the corporation with your personal check?

The Witness: No.

Q. (By Mr. Boyd): Were these dues payments made by the company made as a company expense item of its own?

* * * * *

Q. (By Mr. Boyd): Do you understand the question, Mr. Shuck?

(Testimony of E. F. Shuck, Sr.)

A. It is rather confusing. [83]

Q. Was it paying its own expenses or paying your expenses? Did you reimburse it for the dues which it paid to the Seattle Chapter of A. G. C.?

A. Did I do what?

Q. Did you ever reimburse the corporation for dues which the corporation paid to the Seattle Chapter of A. G. C.?

A. No.

Q. In other words, that which was paid in by the corporation to the Seattle Chapter of A. G. C. was paid as its own expense in the A. G. C., was it not?

A. That is customary, yes.

Mr. Boyd: That is all. I have played with this enough.

Trial Examiner: Do you consider the dues to the Seattle Chapter of A. G. C. as an operating expense of the corporation?

The Witness: I believe that is the way it is handled on our records, yes, sir.

Trial Examiner: Do you make deductions for that on your tax returns?

The Witness: Yes, sir.

Trial Examiner: On your personal tax returns or the corporation's tax returns?

The Witness: It is not on my personal tax returns. [84]

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GENERAL COUNSEL'S EXHIBIT No. 6
BUSINESS DIRECTORY

April 1953

(Emblem)

The Associated General Contractors of America,
Seattle Chapter, Inc.

The Seattle Construction Council, Seattle Chap-
ter A.G.C. Affiliate

(Emblem)

Construction Center, 215 W. Harrison, Alder
5433, Seattle 99, Wash.

Seattle Chapter, Inc.
The Associated General
Contractors of America

* * * * *

Membership

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Shuck, E. F.—B

535 Pontius Avenue (9).....SE 7993

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CERTIFICATE

This is to certify that the attached proceedings
before the National Labor Relations Board for the
19th Region in the matter of: E. F. Shuck Con-
struction Co. were had as therein appears, and that
this is the original transcript thereof for the files
of the Board.

ACME REPORTING COMPANY

Official Reporters

By BERNICE M. JACKSON

Field Reporter

